

No. 12591

United States
Court of Appeals

For the Ninth Circuit.

JOHN H. FAHEY, et al.,

Appellants,

vs.

O'MELVENY & MYERS, W. I. GILBERT, JR., and RICH-
ARD FITZPATRICK,

Appellees.

and

FEDERAL HOME LOAN BANK OF SAN FRANCISCO,
Appellant,

vs.

O'MELVENY & MYERS, W. I. GILBERT, JR., and RICH-
ARD FITZPATRICK,

Appellees.

Transcript of Record

In Two Volumes

Volume I

(Pages 1 to 396)

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Southern District of California,
Central Division.

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INDEX

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PAGE

Affidavit of Bogardus, Irving Filed on Behalf of Defendant, Cross Defendant and Third Party Defendant, Federal Home Loan Bank of San Francisco, in Opposition to Motions of Plaintiffs in Action No. 5678 for Order Directing Payment of Attorneys' Fees on Account and for Order Directing Repayment of Moneys Advanced by Shareholders Protective Committee and Motion of First Federal Savings and Loan Association of Wilmington, et al., for Attorneys' Fees on Account and Costs	130
Affidavit of Fitzpatrick, Richard Countering Affidavit of Ammann, A. V., in Opposition to Motion and Petition of Plaintiff, First Federal Savings and Loan Association of Wilmington, for Allowance of Attorneys' Fees and Costs in Class Action.....	174
Affidavit of Service by Mail of Affidavit of Fitzpatrick, Richard Countering Affidavit of Ammann, A. V., in Opposition to Motion and Petition of Plaintiff First Federal Savings and Loan Association of Wilmington for Allowance of Attorneys' Fees and Costs in Class Action.....	226

INDEX	PAGE
Affidavit of Fitzpatrick, Richard Supplementing His Affidavits Filed in Support of Motion for Attorneys' Fees and Supplement Thereto....	232
Affidavit of Fussell, Paul Supplementing His Affidavit Filed in Support of Motion for Attorneys' Fees and Supplement Thereto.....	229
Affidavit of Gilbert, W. I. Jr.....	191
Affidavit of Residence of Bogardus, Irving....	217
Affidavit in Support of Motion to Intervene...	250
Affidavit of Wyman, John M.....	113
Answer of A. V. Ammann and George K. Bramley to Fifth Supplemental Cross-Claim in Interpleader of Title Service Company.....	325
Answer to the Fifth Supplemental Cross-Claim in Interpleader of Title Service Company...	331
Answer and Objections of Federal Home Loan Bank of San Francisco to Motion of Mallonee, Bucklin and Fergus, the Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association; Long Beach Federal Savings and Loan Association, Cross-Claimants and Third Party Plaintiffs; Title Service Company, a Corporation, Defendant and Cross-Claimant in Interpleader; Robert, H.....	201
Appeal:	
Designation (Federal Home Loan Bank of San Francisco) of Contents of Record on	324

INDEX

PAGE

Appeal (Continued):

Designation (U. S. Attorney) of Contents of Record on.....	337
Joinder of Appellants Home Loan Bank Board, et al., in Statement of Federal Home Loan Bank of San Francisco, of Points to Be Relied Upon on.....	873
Notice of (Federal Home Loan Bank of San Francisco).....	323
Notice of (U. S. Attorney).....	322
Order Extending Time for Filing Record on	339
Order Permitting Reference to Printed Record on, in Appeal Entitled "Fahey, et al., vs. Mallonee, et al.," No. 12511 in the Files of the Above Entitled Court, Extending Time of All Parties for Desig- nation of Portions of Record for Printing on	875
Partial Table of Documents Printed in Record on Appeal in Fahey, et al., v. Mallonee, et al., 12511, Pertinent to.	858, 861
Statement of Federal Home Loan Bank of San Francisco, of Points to Be Relied Upon on.....	865
Complaint in Intervention.....	244

	INDEX	PAGE
Designation of Contents of Record on Appeal by Federal Home Loan Bank of San Francisco		324
Designation of Contents of Record on Appeal by United States Attorney.....		337
Disapproval and Objections of Federal Home Loan Bank of San Francisco as to Form of Proposed Findings of Fact, Conclusions of Law and Order Re Allowance of Attorneys' Fees on Account.....		268
Disapproval and Objections of Federal Home Loan Bank of San Francisco to Proposed Amendments, Additions and/or Deletions to Findings of Fact, Conclusions of Law and Order Re Allowance of Attorneys' Fees on Account Proposed by Prevailing Parties on Motion for Attorneys' Fees Heretofore Lodged May 19, 1950, Filed on Behalf of Plaintiffs Mallonee, et al., and Long Beach Federal Savings and Loan Association.....		282
Exhibits, Petitioners':		
No. 2-27-50- 1—Chart Re Experience and Legal Training of Men in Office		352
2-27-50- 2—Motion for Order Directing P a y m e n t of Attorneys' Fees on Account.....		392

INDEX

PAGE

Exhibits, Petitioners'—(Continued)

2-27-50- 4—Affidavit of Richard Fitzpatrick in Support of Motion for Order Directing Payment of Attorneys' Fees on Account..... 482

2-27-50-13—Letter Dated April 27, 1949 561

Fifth Supplemental Cross Claim in Interpleader of Title Service Co..... 138

Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' Fees on Account 288

Findings of Fact, Conclusions of Law, and Order for Substitution of Parties Plaintiff.. 219

Joinder of Appellants Home Loan Bank Board, et al., in Statement of Federal Home Loan Bank of San Francisco, of Points to Be Relied Upon on This Appeal..... 873

Memorandum in Opposition to Motions for Orders Directing Payment of Attorneys' Fees on Account, and Repayment of Moneys Advanced, and the Supplements Thereto..... 3

Minute Orders:

December 19, 1949..... 25

February 27, 1950..... 27

March 27, 1950..... 172

	INDEX	PAGE
Minute Orders (Continued):		
April 7, 1950.....		236
April 14, 1950.....		254
May 22, 1950.....		263
June 19, 1950.....		320
Motion to Dismiss "Motion for Order of Court Requiring Defendants and Cross-Defendants Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc., to Appear and Testify," and All Supporting Papers, or in the Alternative to Strike the Same From the Files.....		
		212
Motion for Leave to Intervene.....		241
Motion for Order of Court Requiring Defend- ants and Cross-Defendants Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc., to Appear and Testify.....		
		150
Affidavit of Chapman, Charles K.....		161
Affidavit of Westover, Wyckoff in Response to the Documents Filed March 20, 1950, by Home Loan Bank Board, et al., and Federal Home Loan Bank of San Fran- cisco, et al.....		
		164
Motion for Substitution of Parties Plaintiff Due to Death, (Rule 25 F.R.C.P.).....		
		29
Memorandum of Points and Authorities...		33
Affidavit of Mallonee, Flora E., in Re: Mo- tion to Substitute Parties Plaintiff.....		
		34

INDEX	PAGE
Names and Addresses of Attorneys.....	1
Notice of Appeal by Federal Home Loan Bank of San Francisco.....	323
Notice of Appeal by United States Attorney...	322
Notice by Clerk of Entry of Judgment.....	225
Notice of Motion for Leave to Intervene.....	238
Notice of Motion for Substitution of Parties Plaintiff Under Rule 25, (F.R.C.P.).....	36
Affidavit of Service by Mail.....	42
Objections to Proposed "Findings of Fact, Con- clusions of Law, and Order Re Allowance of Attorneys' Fees on Account".....	264
Order Extending Time for Filing of Cross- Interrogatories	252
Order Extending Time for Filing Record on Appeal	339
Order Granting Permission to File Affidavit of Fitzpatrick, Richard.....	193
Order Permitting Reference to Printed Record on Appeal in Appeal Entitled "Fahey, et al., vs. Mallonee, et al.," No. 12511 in the Files of the Above Entitled Court, Extending Time of All Parties for Designation of Portions of Record for Printing on Appeal, and Extend- ing Time of All Parties for Filing Briefs....	875
Order Re Use of Photostatic Copies of Exhibits	340

INDEX	PAGE
Order Staying Payment of Attorneys' Fees and Fixing Amount of Supersedeas Bond.....	260
Partial Table of Documents Printed in Record on Appeal in Fahey, et al., v. Mallonee, et al., 12511, Pertinent to Appeal 12591 (Exhibit "A")	858, 861
Portions of Proposed Findings of Fact in Re Attorneys' Fees not Adopted by the District Court	312
Proposed Amendments, Additions and/or De- letions to Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' Fees on Account, Proposed by Prevailing Parties in Motions for Attorneys' Fees Here- tofore Lodged May 19, 1950.....	276
Reasons in Opposition to, and Motion to Strike, the "Motion for Order of Court Requiring Defendants and Cross-Defendants Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc. to Appear and Testify"	193
Affidavit of McKenna, William F.....	198
Reporter's Transcript of Proceedings.....	341
Argument in Behalf of Long Beach Federal Savings and Loan Association.....	811
Argument in Behalf of the Los Angeles Bank	725
Argument in Behalf of the Official Defend- ants	744

INDEX

PAGE

Argument in Behalf of the San Francisco
Bank 756

Argument in Behalf of Shareholders Com-
mittee 804

Memorandum Opinion..... 833

Request for Hearing of Ex Parte Matter..... 262

Response to the Affidavits of Edgerton, J. How-
ard and Skelton, Tracy..... 46

Affidavit of Divers, William K..... 54

Affidavit of Fahey, John H..... 55

Affidavit of Fahey, John H. in Response to
the Affidavits of Edgerton, J. Howard
and Skelton, Tracy..... 47

Affidavit of Strecker, R. J..... 66

Affidavit of Wyman, John M..... 53

Statement of Federal Home Loan Bank of San
Francisco of Points to Be Relied Upon on
This Appeal..... 865

Shareholders' Protective License..... 137

Statement of Reasons in Opposition to Motion
of Lillian A. Coggs well for Leave to Inter-
vene 255

INDEX

PAGE

Witnesses:

Angell, Philip H.

—direct 529, 533

—cross 535, 537

Belcher, Frank B.

—cross 515, 516

Bertram, John

—direct 543

Bishop, Irving G.

—direct 522

—cross 523, 525

Darling, Hugh W.

—cross 509, 519, 520

Morrow, Hubert T.

—direct 353

—cross 357, 373

Noon, Frank C.

—direct 610, 616, 662

Skelton, Tracy

—direct 510, 538

—cross 514

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In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil Action No. 5421-P.H.

PAUL MALLONEE, et al.,

Plaintiffs,

vs.

JOHN H. FAHEY, et al.,

Defendants.

Civil Action No. 5678-P.H.

FEDERAL HOME LOAN BANK OF LOS
ANGELES,

Plaintiffs,

vs.

FEDERAL HOME LOAN BANK OF SAN
FRANCISCO,

Defendants.

MEMORANDUM IN OPPOSITION TO
MOTIONS FOR ORDERS DIRECTING
PAYMENT OF ATTORNEYS' FEES ON
ACCOUNT, AND REPAYMENT OF
MONEYS ADVANCED, AND THE SUP-
PLEMENTS THERETO

Come now the defendants, the Home Loan Bank
Board, William K. Divers, Chairman; J. Alston
Adams, Member, and O. K. LaRoque, Member, of
the Home Loan Bank Board, and John H. Fahey,

A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association, and the Federal Savings and Loan Insurance Corporation, an instrumentality of the Government of the United States wholly owned by the United States, and without waiving their [9837] objections to the jurisdiction of this Court over their respective persons and without waiving their respective objections to the venue and other objections, but specifically reserving and asserting the same, respectfully submit the following memorandum of points and authorities and the attached affidavits in opposition to the Motion for Order Directing Payment of Attorneys' Fees on Account, to the Motion for Order Directing Payment of Moneys Heretofore Advanced by Shareholders Protective Committee, and to the supplements thereto filed by plaintiffs in the above-entitled Civil Action No. 5678-P.H.

I.

The Court Cannot Pay Fees or Expenses Out of San Francisco Bank Assets Because the Court Has No Jurisdiction Over the Subject Matter of the Actions.

A. The complaints seek to have the Court readjust Federal Home Loan Bank Districts, establish Federal Home Loan Banks, and remove a Conservator for a Federal savings and loan association.

These fees are sought by the attorneys for the plaintiffs in No. 5678, including the Federal Home Loan Bank of Los Angeles, hereinafter referred to

as the "Los Angeles Bank," in consideration of the services of these attorneys in the two consolidated cases entitled *Mallonee v. Fahey*, Civil Action No. 5421, and *Federal Home Loan Bank of Los Angeles v. Federal Home Loan Bank of San Francisco*, Civil Action No. 5678. The first of these actions began in May, 1946, as an action to remove the Conservator for the Long Beach Federal Savings and Loan Association, hereinafter referred to as the "Association," for declaratory relief that the appointment of the Conservator was void, and for an accounting. The plaintiffs were shareholders of the Association suing derivatively and the defendants included officials of the Government, the Conservator for the Association and the Association itself. The pleadings admit that no demand was made by the plaintiffs upon the directors of the Association to authorize the action in the Association's name. The answer of the Association was filed by its directors who joined the plaintiffs in its prosecution against the other [9838] defendants by filing a cross-claim. The Association also filed an action against the Los Angeles Bank and the Federal Home Loan Bank of San Francisco, hereinafter referred to as the "San Francisco Bank," seeking a declaratory judgment as to which Bank was in existence.

The Home Owners' Loan Act of 1933, pursuant to which the Conservator was appointed, was held unconstitutional by a three-judge court in September, 1946, in finding for the plaintiffs and the Association in *Mallonee v. Fahey*, No. 5421. The

Supreme Court reversed this judgment upon an appeal by the Government. Part of the services for which compensation is here sought by these attorneys is in connection with their effort to obtain an affirmance of this judgment of the three-judge court in Civil Action No. 5421.

However, this Court on January 23, 1948, ordered the Association returned to the control of the same persons by reasons of whose actions the Conservator in the first instance was appointed. This order of the Court was entered over the objections of the Home Loan Bank Board and the Government. It was also taken without any hearing on the merits of the controversy in Court or before an administrative agency.

Later, supplemental pleadings were filed in *Mal-lonee v. Fahey*, No. 5421, which sought the recovery of money damages against the San Francisco Bank and Government defendants.

Counsel were employed and the case of *Federal Home Loan Bank of Los Angeles v. Federal Home Loan Bank of San Francisco*, No. 5678, was instituted, after the dissolution of the Los Angeles Bank. Six of the more than one hundred and fifty member financial institutions of the former Los Angeles Bank joined as plaintiffs in bringing the action. There was filed a third party cross-claim in *Mal-lonee v. Fahey* seeking the same relief that was sought in *Federal Home Loan Bank of Los Angeles v. Federal Home Loan Bank of San Francisco*. The actions were consolidated by the Court over the objections of the Government.

The action of Federal Home Loan Bank of Los Angeles v. Federal Home Loan Bank of San Francisco, No. 5678, purports to be within the [9839] provisions of Section 1655 (formerly Section 118) of Title 28. The action was commenced in August, 1946, following the merger of the Los Angeles Bank into the Federal Home Loan Bank of Portland, hereinafter referred to as the "Portland Bank," the dissolution of the Los Angeles Bank, the change in name and location of the Portland Bank to San Francisco, and the combination of the Eleventh and Twelfth Federal Home Loan Bank Districts into one Eleventh District serving the entire area, all of which had been accomplished in March, 1946, pursuant to administrative orders of the Federal Home Loan Bank Administration, of which defendant Fahey was Commissioner. The Federal Home Loan Bank Administration has been succeeded by the Home Loan Bank Board. The plaintiffs in No. 5678, represented by the attorneys whose fees are sought in the motion here opposed, seek to redivide the Eleventh Federal Home Loan Bank District into two districts; to reestablish two Federal Home Loan Banks, a Federal Home Loan Bank at Los Angeles and a Federal Home Loan Bank at Portland; to dissolve the San Francisco Bank; to allocate the members of the San Francisco Bank between such Portland and Los Angeles Banks; to apportion the stock of the San Francisco Bank, a majority of which is owned by the United States Treasury, between such Portland and Los

Angeles Banks; and otherwise to accomplish certain governmental actions.

The attempt to bring the action within former Section 118 of Title 28 is made by alleging that the suit is to recover the property of the dissolved Los Angeles Bank. The six member financial institutions, also plaintiffs, in addition seek the recovery of deposits and assets, which the San Francisco Bank has repeatedly stated these plaintiffs are free to withdraw at will.

There has not yet been any trial on the merits of any phase of this litigation. Available administrative remedies have been avoided by plaintiffs in both actions, and the holding of administrative hearings has been opposed by the Association group. No administrative hearing has been asked by the plaintiffs in No. 5678.

The only purported service of process in either case on any of these [9840] defendants, except defendant Ammann, has been service by mail outside the State of California.

This conflict is clearly between a certain few financial institutions and the United States Government. The actions of which the plaintiffs in both *Mallonee v. Fahey* and *Federal Home Loan Bank of Los Angeles v. Federal Home Loan Bank of San Francisco* complain are the actions of the Government. It was the Government which appointed the Conservator for the Association. It was the Government which transferred the assets and liabilities of, and the memberships in, the Los Angeles Bank

to the Portland Bank; which caused the Portland Bank to become the San Francisco Bank; and which dissolved the Los Angeles Bank. The San Francisco Bank, as well as its two predecessors, is an instrumentality of the Government and the Government is the majority stockholder of the San Francisco Bank, as it always was of the Los Angeles and Portland Banks. It is the Home Loan Bank Board, a Government agency, that has full authority to establish the two banks, create a new district, and divide the San Francisco Bank's assets and membership.

The fact that this is a suit against the Government is recognized by the plaintiffs in both actions in that they name and have attempted to serve as defendants the members of the Home Loan Bank Board and the Home Loan Bank Board itself by mail outside California. The plaintiffs in *Federal Home Loan Bank of Los Angeles v. Federal Home Loan Bank of San Francisco* make no allegation that the Home Loan Bank Board or any of its members have or claim any interest or right of any nature in any of the property which ever has belonged to the dissolved Los Angeles Bank. The members of the Home Loan Bank Board and the Home Loan Bank Board itself have never asserted any interest in this property nor could that Board, or its members who are sued only in an official capacity, have any such interest. Clearly then the plaintiffs in serving these members and the Board by substituted service outside the State of Cali-

ifornia are not undertaking to enforce any lien or cloud upon the title to real or personal property within the District. They are only recognizing that their conflict is with the Government, and that the relief they seek is [9841] governmental relief, complex administrative actions revising the reserve banking and supervisory system for savings and home financing institutions in the United States.

B. The dissolution, liquidation, and reorganization of the Federal Home Loan Banks are matters for administrative determination by the Home Loan Bank Board.

The Federal Home Loan Bank Act, as amended, provides:

“Sec. 3. As soon as practicable the board shall divide the continental United States, Puerto Rico, the Virgin Islands, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by the board, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable

the board shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by the board. Its title shall include the name of the city at which it is established.

“Sec. 25. Each Federal Home Loan Bank shall have succession until dissolved by the board under this Act or by further Act of Congress.

“Sec. 26. Whenever the board finds that the efficient and economical accomplishment of the purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as the board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the board, acquire assets of any such liquidated or reorganized bank and assume liabilities thereof, in whole or in part.”

(12 U.S.C. 1423, 1445, and 1446.)

The Charters issued to the Los Angeles and Portland Banks each expressly provide:

“Sec. 27. This Bank shall have succession until dissolved by the Federal Home Loan Bank Board * * *.”

The San Francisco Bank operates under the Charter of the Portland Bank, [9842] which Charter is unchanged except for the change of name.

C. These functions having been vested in the Executive Branch of the Government, the courts are precluded from usurping them.

Massachusetts v. Mellon,
262 U.S. 447;

Texas & Pacific Railway Company v. Abilene
Cotton Oil Company, 204 U.S. 426, 51 L.
ed. 553;

Myers vs. Bethlehem Shipbldg. Corp.,
303 U.S. 41, 82 L. ed. 638;

Macauley v. Waterman Steamship Corp.,
327 U.S. 540, 90 L. ed. 839;

Evans v. Superior Court,
96 P. 2d 107; appeal dismissed 309 U.S.
640, 84 L. ed. 995;

Gray v. Powell,
314 U.S. 402, 86 L. ed. 301:

“It is not the province of a court to absorb the administrative functions to such an extent that the executive or legislative agencies become mere fact-finding bodies deprived of the advantages of prompt and definite action. * * * Where as here a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched.”

Kirwan v. Murphy,

189 U.S. 36, 54, 47 L. ed. 698, 705:

“The administration of the public lands is vested in the Land Department, and its power in that regard cannot be divested by the fraudulent action of a subordinate officer, outside of his authority, and in violation of the statute.

* * * The courts can neither correct nor make surveys. The power to do so is reposed in the political department of the government, and the Land Department, charged with the duty of surveying the public domain, must primarily determine what are public lands subject to survey and disposal under the public land laws. Possessed of the power, in general, its exercise of jurisdiction cannot be questioned by the courts before it has taken final action.”

Adams v. Nagle,

303 U.S. 532, 82 L. ed. 999:

“In establishing the national banking system Congress has invested the Comptroller, an administrative officer, with jurisdiction to appoint a receiver after investigation and a finding that a bank has become insolvent. * * * It would be intolerable if the Comptroller's decision could be attacked collaterally in every suit by a receiver against the shareholders to collect the amount of the assessment. It is settled this cannot be done. It would be equally intolerable if stockholders as a class could call upon a

court to review the Comptroller's exercise of his discretion. For a court to entertain a suit for this purpose would be to render nugatory the functions Congress has confided in the Comptroller."

Interstate Commerce Com. v. Illinois C. R. Co., 215 U.S. 452, 54 L. ed. 281:

"The courts cannot, under the guise of exerting judicial power, usurp merely administrative functions by setting aside an order of the Interstate Commerce Commission within the scope of the power delegated to such Commission, upon the ground that such power was unwisely or inexpediently exercised." [9843]

Di Melia v. Bowles,
148 F. 2d 725 (1 C.C.A.):

"The Price Administrator was given the right under the law to determine on evidence whether regulations had been violated, and,—after proceedings which satisfied the requirements of justice,—to withdraw the permission given the dealer to handle this important wartime commodity, if the conditions had not been kept. The courts cannot review his decision, as on an appeal. Their authority does not go beyond ascertaining whether the proceedings satisfied the demands of due process and whether the action of the administrative body was without errors of law and appropriate under the authority conferred upon it."

Wannamaker v. Edisto Nat. Bank of Orangeburg,

62 F. 2d 696 (4 C.C.A.):

"We are dealing here with the extent of the power of the Comptroller to appoint a receiver for an insolvent bank * * * and it is settled that the determination as to the solvency of a national bank * * * is committed exclusively to the judgment and discretion of the Comptroller, and it is not subject to judicial review."

United States v. Hitchcock,

190 U. S. 316, 47 L. ed. 1074:

"Congress has constituted the Land Department, under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions, to which is confided the execution of the laws which regulate the purchase, selling, and care and disposition of the public lands. * * * Whether he decided right or wrong, is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination. * * * If this writ were granted we would require the Secretary of the Interior to repudiate and disaffirm a decision which he regarded it his duty to make in the exercise of that judgment which is re-

posed in him by law, and we should require him to come to a determination upon the issues involved directly opposite to that which he had reached, and which the law conferred upon him the jurisdiction to make. * * * The responsibility as well as the power rests with the Secretary, uncontrolled by the courts.”

D. Indispensable parties are not joined.

The members of the Home Loan Bank Board, and the Board, are indispensable parties to the action.

Williams v. Fanning,
332 U. S. 490;

Daggs v. Klein,
169 F. 2d 174, cert. denied, 335 U. S. 908;

American Communications Assn. v.
Schauffler,
80 F. Supp. 400.

The plaintiffs have recognized this indispensability by undertaking to serve the members and the Board as defendants. However, suit cannot be maintained in the State of California against the members of the Home Loan Bank Board, or against the Board, because the members of the Board, and the Board, are official residents [9844] of the District of Columbia.

Title 28 U.S.C., Section 1391;

Butterworth v. Hill,

114 U.S. 128;

Scientific Mfg. Co. v. Walker,

40 F. Supp. 465;

Robertson v. Railroad Labor Board,

268 U.S. 619;

Transcontinental and Western Air v. Farley,

71 F. 2d 288;

Hartmann v. Federal Reserve Bank of

Philadelphia,

55 F. Supp. 801.

Further, the only purported service of process on the members of the Board, or on the Board, has been service by mail in the District of Columbia, which is not effective.

Rule 4, F.R.C.P.

Substituted service cannot be justified under Section 1655 (formerly 118) of Title 28.

There can be no substituted service under this section on any defendant who claims or asserts no interest in the property.

Rainbow Rubber Co. v. Holtite Mfg. Co.,

20 F. Supp. 913, 916:

“* * * There is a further indispensable condition to the jurisdiction over absent parties under this section, and that is, that the absent party must in fact be an adverse party; that is to say, that the absent party must have made

an express or implied assertion of adverse ownership or encumbrance. * * *''

The members of the Home Loan Bank Board, individually or collectively, do not have, claim or assert, and never have had, claimed or asserted, any interest of any nature in any of the property that ever belonged to the Federal Home Loan Bank of Los Angeles, Federal Home Loan Bank of Portland, or the Federal Home Loan Bank of San Francisco, nor does or ever did the Home Loan Bank Board itself, nor does or ever did the Federal Home Loan Bank Administration or John H. Fahey, individually or as Federal Home Loan Bank Commissioner, have or assert any such interest. For this reason, they cannot be served under Section 1655. On the other hand, the members of the Home Loan Bank Board are indispensable parties to the action, as above set forth, because the reestablishment of the Los Angeles Bank is a prerequisite to its acquisition of any property, and only the Home Loan Bank Board can reestablish a Home Loan Bank at Los Angeles and divide the Eleventh Federal Home Loan Bank District.

Further, the action itself is not an action within Section 1655, or former Section 118, of [9845] Title 25.

Ladew v. Tennessee Copper Co.,
218 U. S. 357;

Kansas Gas & Electric Co. v. Wichita Natural Gas Co.,
266 F. 614;

General Investment Co. v. Lake Shore &
M.S.R. Co.,
260 U. S. 261;

Appalachian Electric Power Co. v. Smith,
67 F. 2d 451; cert. denied 291 U. S. 674:

“* * * The defendants are asserting no rights under the orders in question and have no personal interest in them. The interest is in the public represented by the government of the United States. The United States has not been made a party and has not consented to be sued in such a case; and yet it is well settled that in a suit to remove a cloud or quiet title the adverse claimant is a necessary party to the suit. *Wood v. Phillips* (C.C.A. 4th) 50 F. (2d) 714, 717; 5 R.C.L. 669, and cases cited. To grant relief against the defendants here would amount to nothing. It would not be binding upon the United States or even upon the Power Commission.”

E. No claim is stated by plaintiffs upon which relief can be granted.

The action purports to seek to quiet the title of a dissolved agency of the United States to assets it once had. There is no claim that any member financial institutions suffered any loss by the merger and dissolution, and in fact none did suffer.

F. Attorneys' fees cannot be paid out of a corporation's assets when the Court has no jurisdiction, or when indispensable parties are absent.

Fryer v. Weakley,
(C.C.A. Mo. 1919), 261 F. 509.

The fact that the Court has seized property of the San Francisco Bank does not authorize payments therefrom.

Hawes v. First Nat. Bank,
229 F. 51:

“* * * Courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court.”

II.

The action is not for the benefit of the San Francisco Bank, or of the Los Angeles Bank stockholders.

The action cannot be successful for the reasons set forth above, and also because the facts are as stated in the pleadings of these defendants and as set forth in the attached affidavits. Neither can any allowance to the plaintiffs be based upon any prospect of a conclusion of the litigation through compromise and settlement for the reason that there are no pending negotiations for compromise or settlement of this litigation. Accordingly, no allowance of attorney's fees can [9846] be granted.

Hobbs v. McLean,
117 U.S. 567, 582;

Sprague v. Ticonic National Bank,
307 U.S. 161;

McCourt v. Singers-Bigger,
145 F. 103, 114.

Even if the suit were successful, it would benefit neither the Bank nor the former Los Angeles Bank stockholders. There is no allegation that a share of stock in the Federal Home Loan Bank of San Francisco immediately following the merger was not equal in value to a share of stock in the Los Angeles Bank, or that any financial loss to any stockholder has resulted from the merger, nor has there been any such loss. There is no allegation that the prayers of the plaintiffs, if granted, would benefit financially the members of the San Francisco Bank, out of whose assets these attorneys seek payment of their fees, or even the former members of the dissolved Los Angeles Bank, nor would there be in fact any such benefit. On the contrary, this action has only caused outlays of the San Francisco Bank's funds and delayed the effectuation of economies in its operations.

The actions of the Government which are attacked in these suits are in the public interest and in the interest of all member institutions, and were required to be taken by statutes of the United States. This is not a suit to preserve or protect property.

And the Government is and always has been the majority stockholder in the San Francisco Bank and was such at all times in the Los Angeles and Portland Banks.

But attorneys' fees cannot be allowed out of as-

sets of the San Francisco Bank when neither the San Francisco Bank nor the Los Angeles Bank benefits, or when only one small group of minority stockholders benefits, or where attorneys represent individual stockholders and not the Bank, or to secure management and control for a minority group.

Wolfe v. Paragon Refining Co.,
74 F. 2d 193;

Hartman v. Oatman Gold Mining & Milling
Co.,
(Ariz.), 198 P. 717;

Hildreth v. Western Realty Co.,
(N.D.), 242 N.W. 679, 684;

Ham v. Norwood,
(N.C.), 147 S.E. 291;

Joyce v. Congdon,
(Wash.), 195 P. 29;

Tefft v. Schaefer,
(Wash.), 239 P. 837, 1119;

Annotation, 152 A.L.R. 919. [9847]

Hempstead v. Meadville Theological School
(Pa.), 134 A. 103, 105, 49 A.L.R. 1145, 1149:

“* * * But the attempted transfer of property to the Illinois corporation, if it can be so called, to be used for the same purpose, would not be a dissipation of the property in any sense of the word. The transfer might have been to its very great benefit, certainly not to

its advantage. The purpose of the old school and the trust created thereunder could have been carried on as effectively under that arrangement as under the one which was ordered by our prior decision. We so state to elucidate the question of the purpose of that and this litigation. Its effect was to control the managerial acts of the trustees. It was not to preserve property or a fund, and consequently under no stretch of our law could it be brought within the scope of the cases allowing counsel fees. * * *''

Nor did any services of these attorneys in connection with the action to remove the Conservator for the Association entitle them to payment out of the portion, if any, of the impounded assets that belongs to the Association.

Apart from the claims for unestablished damages, which were never suffered and in which phase these attorneys have not stated they assisted the Association, the controversy over the conservatorship is one over the right to corporate office, in connection with which fees and costs cannot be allowed against the corporation.

Burley Tobacco Co. v. Vest

(Ky.), 178 S.W. 1102

In any event the Association has benefited from the appointment of the Conservator, while the interlocutory order of this Court purporting to remove the Conservator is prejudicial to the interests of

the Association, the public, and the Government, should be vacated, and is without force or effect in law. In addition, these attorneys have not purported to represent the Association.

III.

This is not a case where plaintiffs would be precluded from presenting their case if fees were not allowed.

The six financial institutions, former members of the Los Angeles Bank, [9848] that join as plaintiffs in No. 5678, have total assets of \$95,581,267.00.

Roster of Savings and Loan Associations,
1949, California Savings and Loan League.

They can pay their own attorneys and expenses.

JAMES M. CARTER,
United States Attorney.

ARLINE MARTIN,
Assistant U. S. Attorney.

By /s/ ARLINE MARTIN,
Assistant U. S. Attorney, Attorneys for Home Loan Bank Board, William K. Divers, Chairman; J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board; John H. Fahey, A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association, and Federal Savings and Loan Insurance Corporation.

[Endorsed]: Filed September 23, 1949.

MINUTE ORDER OF MONDAY, DEC. 19, 1949.

[Title of Cause.]

Hall

For hearing (1) on report of parties herein on progress made in re negotiations for settlement; (2) on report of Ronald Walker, Special Master herein, as to how the inspection of the San Francisco Bank is progressing, pursuant to an order therefor granted Dec. 8, 1948; (3) on Order to Show Cause directed to the Federal Home Loan Bank of San Francisco, sometimes known as the Federal Home Loan Bank of Portland, and to the Federal Home Loan Bank of Los Angeles, and to all of the 300 financial institutions, the purported directors and officers thereof, and the former directors and officers of said purported San Francisco Bank, why the relief prayed for in the motion of this moving party for an order for the dissolution of the San Francisco Bank should not be granted, pursuant to notice and order therefor signed and filed July 6, 1948; (4) on motion of defendant and cross-defendant Federal Home Loan Bank of San Francisco, and the cross-defendants Wm. A. Davis and Gerritt Vander Ende, sued in this action individually, and as a director and/or officer of the Federal Home Loan Bank of San Francisco, etc., for a Summary Judgment in favor of said cross-defendants and against the cross-claimant Long Beach Federal Savings & Loan Assoc., pursuant to notice

thereof filed July 30, 1948; (5) on motion of defendants C. N. Boynton, et al., cross-defendants, for a Summary Judgment, the First Amended and Supplemental Complaint of plaintiffs and the Amended Cross-Claim and Supplemental Cross-claim of defendant Long Beach Federal Savings & Loan Assoc., pursuant to notice thereof filed July 30, 1948;

Wyckoff Westover, Esq., appearing as counsel for Plaintiffs Shareholder Members' Protective Committee of Long Beach Federal Savings & Loan Assoc.; W. I. Gilbert, Jr., Esq., appearing as counsel for First Federal Savings & Loan Assoc. of Wilmington; Chas. K. Chapman, Esq., appearing as counsel for defendant [13484] and cross-claimant Long Beach Federal Savings & Loan Assoc.; Raymond Tremaine, Esq., appearing as counsel for Robert H. Wallis; John Whyte, Esq., appearing as counsel for Federal Home Loan Bank of Los Angeles; Sylvester Hoffman, Esq., appearing as counsel for Federal Home Loan Bank of S. F.; and Paul Fitting, Ass't U. S. Att'y, appearing as counsel for defendants Fahey, Ammann, and Federal Home Loan Bank Board.

Court orders cause continued to Jan. 3, 1950, 10 a.m., for the proceedings as herein set [13485] forth.

MINUTE ORDER MONDAY, FEB. 27, 1950

[Title of Cause.]

Hall

For hearing on (1) motion of plaintiffs for order directing payment of attorneys' fees on account filed Jan. 6, 1949, and supplement filed on July 8, 1949, 2 p.m.; (2) motion of First Federal Savings & Loan Assoc. of Wilmington for order directing payment of attorneys' fees on account and costs, filed [13923] Feb. 10, 1950, 2 p.m.; (3) motion of plaintiff (5678) and defendant, third-party defendant, cross-claimant and cross-defendant (5421) Federal Home Loan Bank of Los Angeles, for order directing repayment of moneys heretofore advanced by Shareholders' Protective Committee, filed Jan. 6, 1949, and a supplement thereto filed on July 8, 1949, 2 p.m.; and (4) motion of defendant, third-party plaintiff and cross-claimant Long Beach Federal Savings & Loan Assoc. for order to accept the second supplemental deposit in Registry of Court of the disputed premium claimed to be due on Deposit Ins. filed Feb. 13, 1950;

Wyckoff Westover, Esq., appearing as counsel for plaintiffs and Shareholders' Protective Committee; W. I. Gilbert, Jr., Esq., appearing as counsel for First Federal Savings & Loan Assoc., Wilmington; Chas. K. Chapman, Esq., appearing as counsel for defendant Long Beach Federal Savings & Loan Assoc.; Lyman B. Sutter, Esq., appearing as counsel for Title Service Co.; Raymond Tremaine, appearing

as counsel for defendant Robert H. Wallis; Richard Fitzpatrick, Pierce Works, John Whyte, Paul Fussell, Esqs., appearing as counsel for Federal Home Loan Bank of Los Angeles; Irving Bishop, Verne Dusenbery, and Phillip N. Angell, Esqs., appearing as counsel for defendants Federal Home Loan Bank of San Francisco; Paul Fitting, Ass't U. S. Att'y, and Wm. F. McKenna, Ass't Gen'l counsel, appearing as counsel for Federal Home Loan Bank Board; John H. Fahey, and A. V. Ammann; Donald Macguineas, Esq., Dep't of Justice, appearing as counsel for Fed. Home Loan Bank Bd.;

Re Item 4: Court hears argument. Objections are denied and motion for order to accept second supplemental deposit in Registry of the Court is granted.

Re Item 1: Filed response of plaintiffs Malonnee, et al., to applications for attorneys' fees; filed answer and opposition of Federal Home Loan Bank of San Francisco to application for attorneys' fees; filed affidavit of Irving Bogardus in opposition to application for attorneys' fees;

Witness for petitioner Federal Home Loan Bank of Los Angeles is called, sworn, and testifies, and eight exhibits are filed, marked for ident., [13924] and admitted in evidence for petitioner. Five exhibits are filed, marked for ident., and admitted in evidence for opposition.

It is ordered that all exhibits, except No. 2-27-50-5, 2-27-50-6, and 2-27-50-8 be copied in reporter's transcript.

It is ordered that the Federal Home Loan Bank of San Francisco and plaintiffs Mallonee, et al., are allowed to Feb. 28, 1950, to file affidavits or other exhibits in opposition to motion for attorneys' fees, and that petitioners Federal Home Loan Bank of Los Angeles are allowed to Feb. 29, 1950, to file further affidavits or other exhibits; hearing is continued to Feb. 28, 1950.

Re Item 2: Filed affidavit of Chas. Berry by petitioner First Federal Savings & Loan Assoc. of Wilmington, by counsel W. I. Gilbert.

Five witnesses are called, sworn, and testify for petitioner.

Hearing is continued to Feb. 28, 1950, 10 a.m.

Re Item 3: Hearing is continued to Feb. 28, 1950, 10 a.m. [13925]

Court adjourns.

[Title of District Court and Cause.]

MOTION FOR SUBSTITUTION OF PARTIES
PLAINTIFF DUE TO DEATH, (RULE 25
F. R. C. P.)

Come Now, the Plaintiffs Flora E. Mallonee, Mabel E. Fergus, and Winnie Bucklin, the presently constituted Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, in the above-entitled action, and make this, [14044] their Motion, that the Court make its Order substituting Flora E. Mallonee in the place and stead of Paul L. Mallonee, deceased;

and Mabel E. Fergus, in the place and stead of C. H. Newhouse, deceased; as parties plaintiff in the above-entitled action.

This Motion is made upon the following grounds:

1. That the above-entitled litigation was instituted on May 27th, 1946, by Paul L. Mallonee, Winnie Bucklin, and C. H. Newhouse, as a class action for and on behalf of the approximately 16,000 shareholder members of the Long Beach Federal Savings and Loan Association; and

2. That said Paul L. Mallonee, Winnie Bucklin and C. H. Newhouse, were a duly constituted Shareholder Members Protective Committee, duly licensed by the Department of Investments, of the State of California, Division of Corporations, by license number 80282-L.A.; and

3. That on May 19th, 1948, C. H. Newhouse passed away in the City of Long Beach, County of Los Angeles, State of California; and

4. That thereafter Mabel E. Fergus was duly substituted as a member of said Shareholder Members Protective Committee, in the place and stead of C. H. Newhouse, deceased; and

5. That thereafter, application for renewal of said license of said Shareholder Members Protective Committee was duly filed with the Department of Investments, of the State of California, Division of Corporations, requesting that said license number 80282-L.A. be renewed in the name of the new committee, to wit, Paul L. Mallonee, Winnie Bucklin, and Mabel E. Fergus; and pursuant to said renewal application, said license number 80282-

L.A. was duly and regularly renewed as of January 1st, 1949, in the name of "Paul L. Mallonee, Winnie Bucklin, and Mabel E. Fergus, Stockholders' Protective Committee for shares of Long Beach Federal Savings and Loan Association"; [14045] and

6. That on June 3, 1949, Paul L. Mallonee passed away in the City of Long Beach, County of Los Angeles, State of California; and

7. That thereafter, his widow Flora E. Mallonee, was duly and regularly substituted as a member of said Shareholder Members Protective Committee, in the place and stead of said Paul L. Mallonee, her deceased husband; and

8. That thereafter, application for renewal of said license of said Shareholder Members Protective Committee was duly filed with the Department of Investments, of the State of California, Division of Corporations, requesting that said license number 80282-L.A. be renewed in the name of Flora E. Mallonee, Winnie Bucklin, and Mabel E. Fergus; and pursuant to said renewal application, said license number 80282-L.A. was duly and regularly renewed as of January 1st, 1950, in the name of "Mrs. Flora E. Mallonee, Winnie Bucklin and Mabel E. Fergus, Stockholders' Protective Committee for shares of Long Beach Federal Savings and Loan Association"; and

9. That said litigation is a class action continuing for and on behalf of all the approximately

16,000 shareholder members of the Long Beach Federal Savings and Loan Association; and

10. That this motion is based upon all the pleadings, papers, files and documents in the above-entitled action, and upon the Notice of Motion, Affidavit, and Memorandum of Points and Authorities filed herewith.

Wherefore, your affiant respectfully requests that Flora E. Mallonee, and Mabel E. Fergus be substituted as parties plaintiff in place and stead of Paul Mallonee, deceased, and C. H. Newhouse, deceased, respectively, and that said Flora E. Mallonee, Winnie Bucklin and Mabel E. Fergus, as the Shareholder Members [14046] Protective Committee of the Long Beach Federal Savings and Loan Association, be recognized henceforth as the plaintiffs in the above-entitled class litigation.

Dated at Los Angeles, this 13th day of March, 1950.

WESTOVER & SMITH,

By /s/ WYCKOFF WESTOVER,
Attorney for Plaintiffs, Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association

State of California,
County of Los Angeles—ss.

Flora E. Mallonee, being first duly sworn, says:
That she is the Chairman of the Shareholder Members Protective Committee of the Long Beach

Federal Savings and Loan Association, the plaintiffs in the above-entitled action, and is authorized to make this verification for and on behalf of said committee; that she has read the foregoing Motion for Substitution of Parties Plaintiff Due to Death, (Rule 25 F.R.C.P.), and knows the contents thereof; that the same is true of her own knowledge, except as to those matters which are therein stated upon information or belief, and as to those matters, she believes them to be true.

/s/ FLORA E. MALLONEE.

Subscribed and sworn to before me this 13th day of March, 1950.

MARGARET O. SHALLIS.

Notary Public in and for Said
County and State. [14047]

Memorandum of Points and Authorities

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties.

Rule 25(a) Federal Rules of Civil Procedure.

Respectfully submitted,

WESTOVER & SMITH,

By /s/ WYCKOFF WESTOVER,
Attorney for Plaintiffs, Shareholder Members Pro-
tective Committee of the Long Beach Federal
Savings and Loan Association. [14048]

[Title of District Court and Cause.]

AFFIDAVIT OF FLORA E. MALLONEE, IN
RE: MOTION TO SUBSTITUTE PARTIES
PLAINTIFF

State of California,
County of Los Angeles—ss.

Flora E. Mallonee, sometimes known as Mrs. Paul Mallonee, being first duly sworn, deposes and says: [14049]

1. That she is the widow of Paul Mallonee, who died at Long Beach, California, in the County of Los Angeles, State of California, on June 3rd, 1949.

2. That your affiant was a friend of C. H. Newhouse during his lifetime.

3. That C. H. Newhouse was the same person who was a member of the Shareholder Members' Protective Committee of the Long Beach Federal Savings and Loan Association, one of the original plaintiffs in the above-entitled litigation.

4. That Mr. C. H. Newhouse passed away on May 19, 1948, in the City of Long Beach, County of Los Angeles, State of California.

5. That your affiant was duly and regularly elected a member of said Shareholder Members' Protective Committee of the Long Beach Federal Savings and Loan Association in place and stead of her deceased husband, Paul Mallonee.

6. That Mabel E. Fergus has been duly and

regularly elected to be a member of the Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association in place and stead of C. H. Newhouse, deceased.

7. That said Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, as presently constituted, consists of Flora E. Mallonee, Winnie Bucklin, and Mabel E. Fergus.

8. That each of the members of said Shareholder Members Protective Committee have expressly consented to act as members of said Shareholder Members Protective Committee and have been so acting and have and do expressly consent to be substituted as parties plaintiff in the above-entitled litigation.

9. That said Shareholder Members Protective Committee has received a license so to act from the Department of Investments, Division of Corporations, of the State of California, dated [14050] January 1st, 1950, file number 80282-L.A.

10. That the above-entitled litigation, Mallonee, et al., vs. Fahey, et al., No. 5421-P.H., and consolidated and related cases in the District Court of the United States, Southern District of California, Central Division, and elsewhere, is still continuing, not yet completely decided or determined.

Wherefore, your affiant respectfully requests that Flora E. Mallonee, and Mabel E. Fergus be substituted as parties plaintiff in place and stead of Paul Mallonee, deceased, and C. H. Newhouse, de-

ceased, respectively, and that said Flora E. Mallonee, Winnie Bucklin and Mabel E. Fergus, as the Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, be recognized henceforth as the plaintiffs in the above-entitled class litigation.

/s/ FLORA E. MALLONEE.

Subscribed and sworn to before me this 13th day of March, 1950.

[Seal] /s/ MARGARET O. SHALLIS,
Notary Public in and for
Said County and State.

[Endorsed]: Filed March 14, 1950. [14051]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUBSTITUTION
OF PARTIES PLAINTIFF UNDER RULE
25, (F. R. C. P.) [14052]

To: The defendant, and cross-defendant, John H. Fahey, individually and as former Chairman of the Federal Home Loan Bank Board, and in his representative capacity as Federal Home Loan Bank Commissioner; and

To: The defendant, and cross-defendant, A. V. Ammann, individually, and as former purported conservator of the Long Beach Federal Savings and Loan Association;

To: The defendant, and cross-defendant, George K. Bramley;

To: The defendant and cross-defendant, the present Home Loan Bank Board, and to the individual defendant members thereof, William K. Divers, its Chairman; J. Alston Adams, a member, and O. K. LaRoque, a member, as defendants, in their representative capacities;

To: The defendant and cross-defendant Federal Savings and Loan Insurance Corporation, and to their attorneys of record:

United States Attorneys' Office, at Los Angeles, California; and

Honorable Ernest A. Tolin, Acting United States Attorney; and

Paul Fitting, Assistant United States Attorney; and

Donald B. MacGuineas, Attorney in the Department of Justice; and

William F. McKenna, Assistant Counsel, Home Loan Bank Board; 600 Federal Building, Los Angeles, California; and

To: The defendant and cross-defendant, Federal Home Loan Bank of Portland, sometimes known and referred to as the Federal Home [14057] Loan Bank of San Francisco, and to the defendants, and cross-defendants, the former and present officers and members of its Board of Directors, both in their individual and in their representative capacities, and to their attorneys of record:

Sylvester Hoffman and Irving G. Bishop, Esqs., Attorneys-at-Law, 215 W. 5th Street, Los Angeles 13, California;

Philip H. Angell, Esq., Attorney-at-Law, Balboa Building, San Francisco 5, California;

Verne Dusenbery, Esq., Attorney-at-Law, 911 Spalding Building, Portland 4, Oregon.

To: The defendant and cross-defendant Roy E. Hegg, and to his attorney of record:

F. Henry NeCasek, Esq., Attorney-at-Law, 3233 E. Anaheim Street, Long Beach 4, California.

To: The defendants and cross-claimant Federal Home Loan Bank of Los Angeles, and plaintiffs in No. 5678-P.H., Coast Federal Savings & Loan Association, Standard Federal Savings & Loan Association, Central Building & Loan Association, State Savings & Loan Association, and Los Angeles American Savings & Loan Association, and to their attorneys of record:

O'Melveny and Myers and Paul Fussell, Attorneys-at-Law, 500 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California; and

Richard FitzPatrick, Esq., Attorney-at-Law, 1400 Chapman Building, 756 South Broadway, Los Angeles 14, California.

To: Plaintiff in Civil Action No. 5678-P.H., First Federal Savings and Loan Association of Wilmington, and to its attorney of record:

W. I. Gilbert, Jr., Attorney-at-Law, 939 Rowan Building, Los Angeles 13, California; [14058]

To: The defendants and cross-defendants, Pioneer Investors Savings and Loan Association, Home Mutual Savings and Loan Association, California Savings and Loan Company, Thrift Federal Savings and Loan Association, San Francisco Federal Savings and Loan Association, Community Savings and Loan Association, Oakland Federal Savings and Loan Association, Citizens' Federal Savings and Loan Association, Berkeley Guarantee Savings and Loan Association, and Golden West Savings and Loan Association, and to the defendant officers and directors of each of said defendant Associations, and to their attorneys of record:

Albert A. Rosenshine, and James E. Burns, Esqs., Attorneys-at-Law, 111 Sutter Street, San Francisco 4, California; and

Charles Dal Sooy, Esq., Attorney-at-Law, 220 Montgomery Street, San Francisco 4, California; and

Alden Ames, Esq., Attorney-at-Law, 435 Russ Building, 235 Montgomery Street, San Francisco 4, California.

To: The defendants and cross-defendants, Harold Lee Newendorp and Charles E. Bradley, and to their attorneys of record:

Linnell & Smith, Esqs., Attorneys-at-Law, 402 Jergins Trust Building, Long Beach 2, California.

To: The Land Title Insurance Company, defendant and cross-defendant, and to its attorney of record:

Robert A. Moffitt, Esq., Attorney-at-Law, 11196 Long Beach Boulevard, Lynwood, California.

To: The defendant and cross-defendant, Home Indemnity Company, and to its Attorneys-of record:

Thomas F. Menzies & Harold L. Watt, Esqs., 1017 Rowan Building, 458 South Spring Street, Los Angeles 13, California; [14059]

To: George Turner, defendant and cross-claimant in interpleader, and to his attorney of record:

F. Henry NeCasek, Esq., Attorney-at-Law, 3233 East Anaheim Street, Long Beach 4, California.

To: Title Service Company, defendant and cross-claimant in interpleader, and to its attorney of record:

Lyman B. Sutter, Esq., Attorney-at-Law, 512 Jerbins Trust Building, Long Beach 2, California.

To: Robert H. Wallis, Esq., defendant and cross-claimant in interpleader, and to his attorney of record:

Raymond Tremaine, Esq., Attorney-at-Law, 210 West 7th Street, Los Angeles 14, California.

To: Long Beach Federal Savings and Loan Association, third-party plaintiff and cross-claimant, and to its attorney of record:

Charles K. Chapman, Esq., Attorney-at-Law, Ocean Center Building, Long Beach 2, California.

You, and Each of You, Will Please Take Notice, that the plaintiffs will, on Monday, the 27th day of March, 1950, at the hour of 10 o'clock a.m., or as soon thereafter as counsel may be heard, make a motion in Court Room No. 1 of the Honorable

Peirson M. Hall, United States District Judge, in the United States Court House and Post Office Building, Los Angeles, California, as follows, to wit:

That the Court make its order that the present parties plaintiff, the present Shareholder Members Protective Committee, be substituted as parties plaintiff in the above-entitled action No. 5421-P.H., suing as representatives of a class for and [14060] on behalf of all of the Shareholder Members of the Long Beach Federal Savings and Loan Association, plaintiffs, in place and stead of Paul Mallonee, deceased, and C. H. Newhouse, deceased.

Said motion will be based upon all the pleadings, papers, files, documents, and records in the above-entitled action and upon this notice of motion, and motion, including memorandum of points and authorities, and the affidavit of Flora E. Mallonee, thereunto attached.

Dated: March 13th, 1950.

WESTOVER & SMITH,

By /s/ WYCKOFF WESTOVER,
Attorney for Plaintiffs, Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association.

[Endorsed]: Filed March 14, 1950. [14061]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Margaret O. Shallis, being first duly sworn, deposes and says:

That affiant is a citizen of the United States, a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above-entitled action; that affiant's business address is 348 East 4th Street, [14073] Long Beach, California; that on the 13th day of March, 1950, affiant served copies of:

Notice of Motion for Substitution of Parties;
Plaintiff (Under Rule 25, F.R.C.P.); and
Motion for Substitution of Parties Plaintiff
Due to Death, (Rule 25, F.R.C.P.) and Points
and Authorities and Affidavit in Support
Thereof,

upon the following parties to the above-entitled action, to the attorneys of record of said parties at the office address of said attorneys as follows:

To: Ernest A. Tolin, Acting U. S. Attorney; Paul Fitting, Assistant U. S. Attorney; Donald B. MacGuineas, Attorney in the Department of Justice, and William F. McKenna, Assistant Counsel, Home Loan Bank Board, 600 Federal Building, Los Angeles, California, Attorneys for defendants John H.

Fahey, A. V. Ammann, George K. Bramley, Home Loan Bank Board, et al.; William K. Divers, J. Alston Adams, O. K. LaRoque, and Federal Savings and Loan Insurance Corporation. (3 copies.)

To: Irving G. Bishop, Sylvester Hoffman, Philip H. Angell and Verne Dusenbery, Attorneys-at-Law, 810 Chester Williams Bldg., 215 West Fifth Street, Los Angeles, California, Attorneys for Cross-defendant, Federal Home Loan Bank of San Francisco, and all of its former and present officers and directors. (3 copies.)

To: O'Melveny & Myers, Attorneys-at-Law, Attention: Paul Fusell, 900 Title Insurance & Trust Bldg., 433 So. Spring Street, Los Angeles, California, Attorneys for defendant and cross-claimant, Federal Home Loan Bank of Los Angeles, and Five Association Plaintiffs. (1 copy.)

To: Richard FitzPatrick, Esq., Attorney-at-Law, 1400 Chapman Bldg., 756 So. Broadway, Los Angeles, California, Attorney for defendant and cross-claimant, Federal Home Loan Bank of Los Angeles, and Five Association Plaintiffs. (1 copy.) [14074]

To: W. I. Gilbert, Jr., Esq., Attorney-at-Law, 939 Rowan Building, Los Angeles 13, California, Attorney for First Federal Savings and Loan Association of Wilmington. (1 copy.)

To: Albert A. Rosenshine, James E. Burns, and Charles Dal Sooy, Esqs., Attorneys-at-Law, 111 Sutter Street, San Francisco 4, California, Attorneys for Pioneer Investors Savings and Loan Asso-

ciation, et al., and their respective officers and directors. (2 copies.)

To: Alden Ames, Esq., Attorney-at-Law, 435 Russ Building, 235 Montgomery Street, San Francisco 4, California, Attorneys for Pioneer Investors Savings and Loan Association, et al., and their respective officers and directors. (1 copy.)

To: Linnell & Smith, Esqs., Attorneys-at-Law, 402 Jergins Trust Building, Long Beach 2, California, Attorneys for defendants and cross-defendants Harold Lee Newendorp, et al. (1 copy.)

To: Robert A. Moffitt, Esq., Attorney-at-Law, 11196 Long Beach Blvd., Lynwood, California, Attorney for Defendant and cross-defendant Land Title Insurance Company. (1 copy.)

To: Thomas F. Menzies and Harold L. Watt, Esq., Attorneys-at-Law, 1017 Rowan Building, 458 South Spring Street, Los Angeles 13, California, Attorneys for defendant, Home Indemnity Company. (1 copy.)

To: Raymond Tremaine, Esq., Attorney-at-Law, 210 West Seventh Street, Los Angeles 14, California, Attorney for Robert H. Wallis, defendant and cross-claimant in interpleader. (1 copy.)

To: Lyman B. Sutter, Esq., Attorney-at-Law, 512 Jergins Trust Building, Long Beach 2, California, Attorney for defendants and cross-claimant in interpleader Title Service Company. (1 copy.) [14075]

To: F. Henry NeCasek, Esq., Attorney-at-Law,

3233 E. Anaheim Street, Long Beach 4, California,
Attorney for Defendant and cross-claimants Roy E.
Hegg and George Turner. (1 copy.)

To: Charles K. Chapman, Attorney-at-Law,
Ocean Center Building, Long Beach 2, California,
Attorney for third-party plaintiff and cross-claim-
ant Long Beach Federal Savings and Loan Asso-
ciation. (1 copy.)

by placing the number of copies indicated after the
names of the respective attorneys, in envelopes ad-
dressed respectively to said parties, at their office
addresses, and by then sealing said envelopes and
depositing the same with postage thereon fully pre-
paid, in the United States Post Office at Long Beach,
California, where is located the persons for and by
whom said service was made.

That there is delivery service by United States
Mail at the places so addressed, or there is a regular
communication by mail between the place of mailing
and the places so addressed.

/s/ MARGARET O. SHALLIS.

Subscribed and sworn to before me this 14th day
of March, 1950.

[Seal] /s/ BERNICE M. POWERS,
Notary Public in and for
Said County and State.

My commission expires Aug. 16, 1952.

[Endorsed]: Filed March 14, 1950. [14076]

[Title of District Court and Cause.]

RESPONSE TO THE AFFIDAVITS OF J.
HOWARD EDGERTON AND TRACY
SKELTON

Come now the defendants, Home Loan Bank Board, William K. Divers, J. Alston Adams and O. K. LaRoque, Members of the Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation, an instrumentality of the United States wholly owned by the United States, and without waiving their objections to the jurisdiction and their objections to the venue and their other objections but specifically reserving and asserting the same, file the [14139] attached affidavits in response to the affidavits of J. Howard Edgerton and of Tracy Skelton, and in addition to the attached affidavits by this reference make the affidavit of J. Francis Moore and attachment thereto, marked for identification as "Govts Exhibit C Date Nov. 7, 1949 No. 11-7-49-C Identification" in the proceedings before this Court in the above-entitled action held on November 7, 1949, a part of their response

to the said affidavit of J. Howard Edgerton and Tracy Skelton the same as if attached hereto.

/s/ ERNEST A. TOLIN,
United States Attorney.

By /s/ PAUL FITTING,
Assistant U. S. Attorney,

Attorneys for Defendants, the Home Loan Bank Board, William K. Divers, Chairman; J. Alston Adams, Member and O. K. LaRoque, Member of the Home Loan Bank Board, and the Federal Savings and Loan Insurance [14140] Corporation.

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN H. FAHEY IN RESPONSE TO THE AFFIDAVITS OF J. HOWARD EDGERTON AND TRACY SKELTON

Commonwealth of Massachusetts—ss.

John H. Fahey, being first duly sworn, on oath deposes and says:

1. At all times from June 14, 1933, to July 27, 1947, affiant was a member of the Federal Home Loan Bank Board and from November 2, 1933, to July 27, 1947, was its Chairman; from February 24, 1942, to July 27, 1947, [14141] he was Federal Home Loan Bank Commissioner; and at all times from July 27, 1947, to December 20, 1947, he was Chairman of the Home Loan Bank Board.

2. That from the time of his appointment as a member of the Federal Home Loan Bank Board and his assumption of duties as such there was under consideration and study by the Federal Home Loan Bank Board the question of a reduction in the number of Federal home loan banks; that at the time of the original establishment of the twelve regional Federal home loan banks there had been no experience upon which to base the location of the Banks or determine the economical number of said Banks; that the intention was at all times that the Banks should be located for the convenience of the institutions using them and that no greater number of Banks should be maintained than would be economically sound and able to support themselves.

3. That from time to time studies were made for and by the Federal Home Loan Bank Board relative to the location of Federal home loan banks and the adjustment of the Federal home loan bank districts; that the documents hereto attached, to wit, Exhibits No. 1, No. 2, No. 3, No. 4, No. 5, and No. 6 are true and correct copies of studies and memoranda made between October, 1936, and December, 1945, relative to the relocation and consolidation of the Federal home loan banks and adjustment of the Federal home loan bank districts; that the Mr. Catlett and the Mr. Stevenson referred to in Exhibit No. 1 were, in 1936, members of the Federal Home Loan Bank Board, and the Horace Russell referred to in said memorandum was the then General Counsel for the Federal Home Loan Bank Board; that Exhibit

No. 2 is a true and correct copy of a study made for the Federal Home Loan Bank Board in the year 1939 relative to consolidation of the Federal home loan banks and adjustment of the Federal home loan bank districts; that Exhibit No. 3 is a true and correct copy of a study of the legal aspects of consolidating the Federal home loan banks and adjusting the Federal home loan bank districts, made at affiant's request by the then General Counsel for the Federal Home Loan Bank Board; that Exhibit No. 4 is a true and correct copy of a study made by Harland G. Keller, then Assistant Governor of the Federal Home Loan Bank System, in August or September, 1945, relative to the consolidation of the [14142] Federal home loan banks and the adjustment of the Federal home loan bank districts, and that said study was made at the request of this affiant, then Federal Home Loan Bank Commissioner; that Exhibit No. 5 is a true and correct copy of a memorandum written by affiant on December 11, 1945, relative to the uneconomical operation of the Federal Home Loan Bank of Portland; that Exhibit No. 6 is a true and correct copy of a memorandum prepared by said Harland G. Keller on or about January 23, 1946, relative to the economies of merging the Federal Home Loan Bank of Los Angeles with the Federal Home Loan Bank of Portland and moving the Federal Home Loan Bank of Portland to San Francisco.

4. That the Federal Home Loan Bank of Portland in September or October, 1945, had only one

loan outstanding and that one in the amount of \$5,000.00; that about that time one Ben A. Perham, a Director of the Federal Home Loan Bank of Portland, came to Washington and discussed with affiant the operations of the Federal Home Loan Bank of Portland; that said Ben A. Perham advised this affiant that the facilities of the Federal Home Loan Bank of Portland had been used little by the associations in that area; that the Bank had made its money by borrowing Government money at a low rate and investing it in Government bonds at a higher rate, and that due to the fact that there was so much money deposited in the associations they had little or no need to borrow from the Bank; that said Ben A. Perham stated he could see no prospect of any change in the situation.

That in December, 1945, one Frank H. Johnson, President of the Federal Home Loan Bank of Portland, came to Washington, D. C., and discussed with affiant the operations of the Federal Home Loan Bank of Portland; that said Frank H. Johnson told affiant that there was, so far as he could see, no prospect of that Bank's doing sufficient business economically to support itself.

It was immediately following the interview with said Frank H. Johnson that this affiant requested Harland G. Keller to make a study and submit a report of the economies, if any, that would be effected by a consolidation of the Los Angeles and Portland Banks. [14143]

Shortly after the receipt of the report from the said Harland G. Keller (here identified as Exhibit

No. 6) affiant discussed with the President of the United States the advisability of consolidating certain Federal home loan banks and particularly the consolidation of the Federal Home Loan Bank of Los Angeles with the Federal Home Loan Bank of Portland; that the President told affiant to proceed to make such consolidations; that affiant explained that he was ready to assume the responsibility but knew that changes along these lines would be objected to in some cases because of local influences, and asked the President if he did not feel it would be desirable to discuss such changes with someone who had more time than the President to consider them. The President stated that this was an excellent idea and asked affiant to discuss them with Mr. John W. Snyder, then Director of the Office of War Mobilization and Reconversion; that affiant had several conferences with Mr. Snyder and discussed with him figures and districts concerning possible consolidations; that thereafter and on March 13, 1946, affiant sent to Mr. Snyder a letter, with attachments, relative to the proposed consolidation of the Federal Home Loan Bank of Los Angeles with the Federal Home Loan Bank of Portland; and that a true and correct copy of said letter and attachments (Exhibit No. 7) is attached hereto; that said letter correctly and truly represented the opinion of affiant as to the advisability of consolidating the Los Angeles and Portland Banks; that thereafter and on March 19, 1946, in response to information that Mr. Snyder had called affiant and wished

affiant to call back, affiant telephoned Mr. Snyder who advised that affiant should "go straight ahead" with the plan for consolidation of the Los Angeles and Portland Banks. Affiant asked Mr. Snyder if he had had an opportunity to check the matter with the President and he said he had, and that the President was completely in agreement.

This affiant never threatened or proposed to take any disciplinary action of any kind against any savings and loan association or any member of a Federal home loan bank on account of its use of funds to contest the action of the Federal Home Loan Bank Administration in consolidating [14144] the Federal Home Loan Bank of Los Angeles or in appointing a conservator for the Long Beach Federal Savings and Loan Association or its use of funds for any litigation, including the litigation described in the caption of this affidavit.

/s/ JOHN H. FAHEY.

Subscribed and sworn to before me this 18th day of March, 1950.

[Seal]: /s/ MARY T. DUFFY,
Notary Public.

My commission expires August 11, 1950. [14145]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN M. WYMAN

District of Columbia—ss.

John M. Wyman, being first duly sworn, on oath deposes and says:

That he is Chief Supervisor, employed by the Home Loan Bank Board and that under regulations and direction of said Board he is responsible for the supervision of all Federal savings and loan associations and for the analysis of all reports of supervisory examinations. [14184]

That the examination of the First Federal Savings and Loan Association of Wilmington, California, as of December 9, 1949, was a regular, customary, routine examination as is made of all Federal savings and loan associations periodically.

That the examination was not made for the purpose of ascertaining what legal expenses were being incurred or disbursed by the association in connection with the consolidation of the Federal Home Loan Bank of Los Angeles, the appointment of a conservator for the Long Beach Federal Savings and Loan Association, or any litigation in connection therewith.

That the examiners were not instructed to make any special report on such expenditures.

That, in fact, no such report was submitted by the examiners.

That no examinations of any associations have

been ordered or made for the purpose of ascertaining whether or not any association has incurred or disbursed legal expenses in connection with the consolidation of the Federal Home Loan Bank of Los Angeles, the appointment of a conservator for the Long Beach Federal Savings and Loan Association, or any litigation in connection therewith.

/s/ JOHN M. WYMAN.

Subscribed and sworn to before me this 17th day of March, 1950.

[Seal] /s/ PAUL P. PFEIFFER, JR.,
Notary Public.

My commission expires Oct. 15, 1952. [14185]

(Title of District Court and Cause.)

AFFIDAVIT OF WILLIAM K. DIVERS

District of Columbia—ss.

William K. Divers, being first duly sworn, upon oath deposes and says:

That he is the Chairman of the Home Loan Bank Board and as such is its chief executive officer.

That the Home Loan Bank Board has never taken or proposed to take any disciplinary action of any kind against any savings and loan association or [14186] any member of a Federal Home Loan Bank on account of its use of funds to contest the action of the Federal Home Loan Bank Administration in consolidating the Federal Home Loan Bank

of Los Angeles or in appointing a conservator for the Long Beach Federal Savings and Loan Association or its use of funds for litigation in connection therewith, including the litigation described in the caption of this affidavit.

/s/ WILLIAM K. DIVERS.

Subscribed and sworn to before me this 18th day of March, 1950.

[Seal] /s/ PAUL PFEIFFER, JR.,
Notary Public.

My commission expires Oct. 15, 1952. [14187]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN H. FAHEY

Commonwealth of Massachusetts—ss.

John H. Fahey, being first duly sworn, deposes and says:

1. At all times from November 2, 1933, to July 27, 1947, affiant was Chairman of the Federal Home Loan Bank Board, and as such, at all times from February 24, 1942, to July 27, 1947, was Federal Home Loan Bank Commissioner. At all times from July 27, 1947, to December 20, 1947, affiant was Chairman of the Home Loan Bank Board. [14188]

2. As Federal Home Loan Bank Commissioner, affiant was vested with the duty of administering the Federal Home Loan Bank Administration. Among other things, said Administration had the

function of providing for the incorporation, examination, and regulation of Federal savings and loan associations. The principal function of these institutions is to receive savings of members of the public and to invest them chiefly in loans upon homes or combination home and business properties. Federal savings and loan associations are local institutions. They are mutual and cooperative in nature. They do not accept deposits but receive funds in the form of investments in shares upon which the members receive dividends.

3. The inception of these Federal institutions was the outgrowth and result of a long history. Savings and loan associations—this term is here used as including also the essentially similar institutions known as building and loan associations, cooperative banks, and homestead associations—have existed in this country under state law since the early part of the nineteenth century and have performed a most valuable service in the promotion of thrift and home ownership. From small and humble beginnings as neighborhood organizations they grew to such an extent that during the nineteen twenties they reached an estimated number of more than twelve thousand, with assets estimated at more than eight billion dollars.

4. That there is a strong public interest in the proper administration of these institutions which hold themselves out to receive and protect the savings of the public, and particularly persons of moderate means, was recognized in state after state,

beginning in the latter part of the nineteenth century, by laws providing for their regulation and supervision by public officials. This legislative recognition of the quasi-public nature of these institutions paralleled to a large extent a similar movement, of earlier origin, for the public regulation and supervision of banking institutions.

5. After the establishment of the Federal Reserve System in 1913 of a reserve credit system for commercial banks, there arose the perception of a similar need for a central reserve system for savings and loan associations [14189] to enable them to meet seasonal or local needs or to meet general needs for funds in times of stress. Action toward this end was not consummated, however, until the mortgage panic which accompanied the general financial and business crises following the stock-market crash of 1929 brought into sharp focus the need for bringing these institutions within the protection of a credit reserve system. As a result of that experience there was enacted in 1932 the Federal Home Loan Bank Act, providing for the establishment of Federal Home Loan Banks in districts to be defined in accordance with the Act. Such banks were to be under the supervision of the Federal Home Loan Bank Board and were designed to provide a credit reserve system for their member institutions, which were to include savings and loan associations, savings banks, and insurance companies engaged in the making of long-term home mortgage loans. Pursuant to the provisions of the Act, the United States

Government purchased more than 93% of the original capital stock of the Federal Home Loan Banks, and at the end of 1945 it held, through the Reconstruction Finance Corporation, almost 63% of the total capital stock of said banks. At the close of 1945 the Federal Home Loan Bank System had 3,697 member institutions which had total assets of more than eight and a half billion dollars, according to figures derived from annual reports of such member institutions.

6. Provision was made by the Home Owners' Loan Act of 1933 for the establishment of Federal savings and loan associations. These were to be local institutions similar to state-chartered savings and loan associations, but were to operate on a unified plan under Federal charter. The relationship of these Federal associations to state-chartered savings and loan associations is similar to the relationship of national banks to state banks, Membership in a Federal Home Loan Bank was made compulsory for Federal savings and loan associations but remained optional for other eligible institutions.

7. The Home Owners' Loan Act of 1933, in authorizing the establishment of Federal savings and loan associations, provided that the Federal Home Loan Bank Board should have authority, under such rules and regulations as it might prescribe, to provide for the organization, incorporation, examination, [14190] operation, and regulation of these associations, and to issue char-

ters therefor, "giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." It further provided that the Board should have full power to provide in said rules and regulations for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association, to require an equitable readjustment of its capital structure, or to release it from such control and permit its further operation.

8. In the next following year, 1934, Title IV of the National Housing Act provided for the creation of the Federal Savings and loan Insurance Corporation. Its purpose is to insure, up to \$5,000 for each investor in each insured institution, the safety of withdrawable or repurchasable investments by the public in all Federal savings and loan associations and in such other savings and loan association as apply for insurance and are found eligible. The capital stock of the Insurance Corporation is wholly owned by the United States, and it was provided that the members of the Federal Home Loan Bank Board, now the Home Loan Bank Board, should constitute the board of trustees of the Insurance Corporation.

9. By virtue of Executive Order No. 9070 of February 24, 1942, issued under Title I of the First War Powers Act, 1941, the functions, powers, and duties of the Federal Home Loan Bank Board and

its members and of the Board of Trustees of the Federal Savings and Loan Insurance Corporation were placed in the Federal Home Loan Bank Administration, which was administered by affiant as Federal Home Loan Bank Commissioner.

10. The Federal Home Loan Bank Administration, which affiant administered, was thus charged with the protection of the interest of investors, including earnings on shares, and of the public, in a major segment of the financial structure of the country. Proper discharge of such a responsibility demands and requires constant vigilance for the detection and suppression of tendencies which, unchecked, might lead to disasters which not only might affect that segment of the economy [14191] dealing with thrift and home-financing institutions but might spread to other segments of the economy as well. This has been especially true since the conclusion of the war, when the country has been in the grip of inflationary pressures which, if unchecked, might lead to a repetition of the mortgage crisis which paralyzed the country in the early nineteen thirties. Such inflationary and sepeculative tendencies have been particularly apparent in the State of California and in Los Angeles County. While the great majority of savings and loan association operators are believed to be conducting sound and safe operations, it has been necessary to be constantly on guard to curb the dangerous practices of a few whose activities threaten the whole structure.

11. The appointment of a conservator for the Long Beach Federal Savings and Loan Association was made in the exercise of the express power and responsibility conferred by the Home Owners' Loan Act of 1933 and was motivated solely by the purpose of protection of the interests of the investors in said association and the interests of the public. Affiant himself did not sign or issue the order by which the conservator was appointed, but this was done by Harold Lee, Deputy Federal Home Loan Bank Commissioner, who had full authority to do so. The proposal to appoint a conservator was made by the said Harold Lee on the basis of facts disclosed to him, and the grounds upon which the appointment was made are stated in the order of appointment and are discussed in the affidavit of John M. Wyman, Chief Supervisor for the Federal Home Loan Bank Board, filed herewith. Prior to the issuance of said order affiant, then in New York, was called by the said Harold Lee and informed by him of the proposed action and authorized and approved it. Affiant had been kept constantly informed of the dangerous conditions existing in the Long Beach Federal Savings and Loan Association and with the information revealed by reports of examination, and was fully aware of the facts then existing as set out in said affidavit of John M. Wyman. It was solely on the basis of these facts that affiant authorized and approved the appointment of the conservator for the protection of the members of the association and of the public and the [14192] Government. It was

and is the opinion and belief of affiant that such action was necessary in the public interest and in the proper discharge of the supervisory responsibilities resting upon the Federal Home Loan Bank Administration.

12. At various places in the pleadings and petitions in this case, reference is made to what is designated as "the seizure of the solvent Federal Home Loan Bank of Los Angeles." There was no seizure of the Federal Home Loan Bank of Los Angeles. Under Orders Nos. 5082, 5083 and 5084 of the Federal Home Loan Bank Administration, the Federal Home Loan Bank of Los Angeles was combined with the Federal Home Loan Bank of Portland and the latter bank was moved to San Francisco and its name changed to Federal Home Loan Bank of San Francisco. Offices were left in both Los Angeles and Portland, so that the entire Pacific coast area now has, in addition to facilities at these two cities, similar facilities at San Francisco. Federal Home Loan Banks are regional reserve banks, and the action which was taken provides a much stronger reserve banking organization in that area.

13. The combination of these banks was brought about by affiant as Federal Home Loan Bank Commissioner under the express authority of Sections 3, 25, and 26 of the Federal Home Loan Bank Act, which Act vested in the Federal Home Loan Bank Board (whose functions were in 1946 in the Federal Home Loan Bank Administration and are now in the Home Loan Bank Board) wide supervisory

authority over the Federal Home Loan Bank System. Among other powers, Section 3 authorized the Board to set up Federal Home Loan Bank districts and to readjust the districts thus created. Section 25 provides that each Federal Home Loan Bank shall have succession until dissolved by the Board or by further act of Congress. Section 26 provides that, whenever the Board finds that the efficient and economical accomplishment of the purposes of the act will be aided by such action, and in accordance with such rules, regulations, and orders as the Board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying [14193] or making provision for the payment of its liabilities. It further provides that, in the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the Board, acquire assets of such liquidated or reorganized bank and assume liabilities thereof, in whole or in part.

14. There was no connection between the appointment of a conservator for Long Beach Federal Savings and Loan Association and the readjustment of the Eleventh and Twelfth Districts and the consolidation thereof. Affiant in making said readjustment and consolidation of said districts was exercising the responsibility with which he was charged by the Federal Home Loan Bank Act and by Executive Order No. 9070, which vested in him the duties of the Federal Home Loan Bank Board.

His sole motive and purpose in the bank matter was to aid in the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act and in so doing to strengthen the reserve facilities on the Pacific coast to aid in meeting the serious post-war inflationary movement threatening the stability of savings and loan institutions in that area. Even with the Federal Home Loan Bank of Los Angeles and the Federal Home Loan Bank of Portland combined into one Federal Home Loan Bank of San Francisco, the total assets of this combined reserve bank for the eleven western states and territories were, immediately after the merger, only \$58,440,053 as opposed to total assets of all its member institutions \$1,045,000,000. Affiant's action in the bank matter was taken only after long and careful consideration and analysis of all factors which seemed to affect the situation. Such action had nothing to do with the appointment of a conservator for the Long Beach Federal Savings and Loan Association, and the appointment of such a conservator was in no way contemplated at the time of said readjustment.

15. Affiant further states that his disapproval of C. E. Berry as president of the Federal Home Loan Bank of Los Angeles was in pursuance of express authority conferred by Section 12 of the Federal Home Loan Bank Act, which provides that the selection of officers by a Federal Home Loan Bank shall be subject to the approval of the Federal Home Loan Bank Board (whose functions were

placed in the Federal Home Loan Bank Administration by [14194] Executive Order No. 9070); that when the name of the said Berry was submitted to him he found himself unable conscientiously to approve him as suitable and qualified for said office; that affiant was at all times ready and willing to approve the selection of any person whom he deemed suitable and qualified therefor; and that affiant at no time urged, supported, or even suggested the selection or candidacy of any person as such president, or attempted to dictate or require any method for the selection of a president of said bank.

16. Affiant further states that there has been no confiscation of the Federal Home Loan Bank of Los Angeles or any of its assets by him or by the Federal Home Loan Bank Administration or at all. On the contrary, affiant states that after years of careful study and appraisal of all factors the Federal Home Loan Bank of Los Angeles and the Twelfth Federal Home Loan Bank District were merged into the Federal Home Loan Bank of Portland and the Eleventh Federal Home Loan Bank District to form one stronger Federal Home Loan Bank upon the recommendation of the government officials whose duty it was to make recommendations, and upon affiant's finding that such action would aid the efficient and economical accomplishment of the purposes of the Federal Home Loan Bank Act. Affiant further states that neither the Long Beach Federal Savings and Loan Association nor any of its assets were seized by him or by the

Federal Home Loan Bank Administration or by any officer or employee of the United States or any of its agencies, and that affiant has never intended, desired, conspired, undertaken, or planned to harm or destroy that association or its assets or to merge that association with any other institution.

/s/ JOHN H. FAHEY.

Subscribed and sworn to before me this 19th day of April, 1949.

[Seal] /s/ MARY T. DUFFY,
Notary Public. [14195]

AFFIDAVIT OF R. J. STRECKER

City of Washington,
District of Columbia—ss.

R. J. Strecker, being first duly sworn, on oath deposes and says:

1. That he is District Examiner for the Third Federal Home Loan Bank District; that in 1946 he was Assistant District Examiner for the Federal Home [14196] Loan Bank Administration, in charge of the examination of the Long Beach Federal Savings and Loan Association and that the facts herein stated are based upon his personal knowledge and upon examination of the records of the Long Beach Federal Savings and Loan Association.

Qualifications of Affiant

2. That for the past twelve years he has been in the Examining Division of the Home Loan Bank Board, Federal Home Loan Bank Board, and Federal Home Loan Bank Administration, and for more than four years prior thereto he was with the Banking Department of the Commonwealth of Pennsylvania and that he is a graduate of the University of Pennsylvania with the degree of Bachelor of Science in Economics; that his education and experience have peculiarly fitted him for examination of financial institutions and that the facts stated herein are based on his examination of the Long Beach Federal Savings and Loan Association as of May 18, 1946, and of the records of said Association.

Officers and Directors

3. That a charter was issued to the Long Beach Federal Savings and Loan Association on July 10, 1934; that the first meeting of the members and the first meeting of the directors were both held on July 21, 1934; that at the first members' meeting seven directors were elected, including T. A. Gregory, M. T. Killingsworth, J. E. Gregory (father of T. A. Gregory), J. K. Reeder and S. I. Bacon, all of whom had continuously held office as directors since that date; that these five persons named were also the directors of the First Federal Savings and Loan Association of Bellflower; that two other directors, J. S. Watts and H. H. Law, elected on July 21, 1934, had since died; that H. H. Law was replaced in January, 1941, by W. M. McColl (son-in-law of

J. E. Gregory), and J. S. Watts was replaced in 1943 by A. A. Allen; that W. M. McColl resigned in January, 1942, and had not been replaced, and at the time of said examination the board consisted of six members; that at the first directors' meeting T. A. Gregory was elected President, J. E. Gregory, Secretary-Treasurer, and J. K. Reeder, Attorney; that Mrs. L. N. Schilling (sister of T. A. Gregory and daughter of J. E. Gregory), who was elected Assistant Secretary on July 21, 1934, severed her connection with the Association [14197] in 1936; that other officers on May 18, 1946, and the years in which they were elected, were S. I. Bacon (1943), Charles E. Berry (1946), Roy Wolfers (1937), all vice presidents, and Ethel L. Roberts, vice president (1945) and assistant secretary (1936); that S. I. Bacon was one of the original directors, and Ethel L. Roberts had been in the employ of the Association since 1934.

Annual Organization Meetings of Directors

4. That in January of each year the directors had held organization meetings; that at these meetings resolutions had been adopted delegating blanket authority to one or more officers to perform certain acts; that certain of the resolutions mentioned below had been adopted at all organization meetings, and since 1943 to the date of said examination all of the following powers had been delegated to the officers: to appraise real estate and approve loans, to fix interest rates, loan fees, service charges, appraisal fees and other loan charges, to make additional

advances to borrowers, to modify and extend loan contracts, to effect partial reconveyances of loan security, to sell real estate loans at a price not less than their unpaid balance, and to sell real estate owned; that some, but not all, of these resolutions required that acts taken by the officers be submitted to the directors for ratification; that three of the six directors were salaried officers, namely T. A. Gregory, J. E. Gregory and S. I. Bacon.

Joint Occupancy

5. That at various times since incorporation the Association's office had been used as a mailing address for nine other organizations, including Title Service Company and Pacific Insurance Agency, these latter two companies operating in rent free space furnished by the Association in its offices, and being served by Association employees whose salaries were paid by the Association; that Title Service Company was originally incorporated in 1935 and had a directorate in 1942 (the last date for which definite information was available) identical with that of the Association; that its principal functions were to act as trustee under deeds of trust and as an escrow holder; that practically all deeds of trust held by the Association [14198] named Title Service Company as trustee; that practically all escrow fees arising from Association loans were retained by Title Service Company; that there was no distinct division of space between that occupied by the Association and that occupied by Title Service Company nor was it possible to segregate the

time of the fifteen employees of the Association who served both Title Service Company and the Association; that the aggregate annual salary of these employees on May 18, 1946, was \$33,840; that none of the income of Title Service Company had ever been paid to the Association; that Pacific Insurance Agency was owned and operated by T. A. Gregory; that as a hazard insurance broker it had written policies covering a substantial portion of the properties securing Association loans, receiving and retaining the usual commissions derived from such business; that there was no distinct division of space between that occupied by the Association and that occupied by the Pacific Insurance Agency and it was not possible to segregate the time of the two employees who served both the Pacific Insurance Agency and the Association; that the aggregate annual salary of these employees on May 18, 1946, was \$4,150; and that none of the income of the Pacific Insurance Agency had ever been paid to the Association.

Loans Secured by First Deeds of Trust

6. A. Concentration.

That on May 18, 1946, outstanding loans secured by first deeds of trust totaled \$12,417,841; that of this sum 52.8%, or \$6,551,357, was due from twenty-one borrowers, including J. D. Willhoit, the Jones Brothers and Jackson Turner; that the relations of these borrowers with the Association and its management will be discussed in succeeding paragraphs.

B. J. D. Willhoit Loans.

1. Identity of J. D. Willhoit

That J. D. Willhoit had secured from the Association 645 loans aggregating \$2,101,568, both as a representative of one E. N. Frame and as an individual; that these loans were secured by approximately 1,246 properties, practically all of which were sold under contracts of sale or second deeds of trust to individual purchasers, subject to first deeds of trust held by [14199] the Association; that monthly payments were collected by the Association from the individual purchasers; that J. D. Willhoit, a real estate broker and builder, occupied a small office in the rear of the Association's building; that this space was given to him rent free by the Association until May 15, 1946, at which time he leased this office and an adjoining one from the Association for a ten-year term at a monthly rental of \$30.00; that J. D. Willhoit acted as a "dummy" at the request of T. A. Gregory in connection with the purchase of a loan by the Association secured by a property in the name of one Paul Cawood, who is a nephew of T. A. Gregory, according to J. D. Willhoit; that approximately \$415,000, which arose from collections from individual purchasers of properties securing Willhoit loans, has been paid to him by Association checks during a five-year period ended in March, 1946; that of this sum checks totaling approximately \$120,000 were cashed by him either at the Association's office or at a local bank, and it was not possible to determine whether the other

checks were also so cashed; that on several occasions two or more Association checks were paid to J. D. Willhoit in approximately equal amounts on the same day, such checks being charged to the same account on the Association's books; that collection fees of 25 cents per payment charged by the Association to J. D. Willhoit were discontinued in October, 1941, without explanation in the Association's records; that, according to an oral statement made to the examiners by J. D. Willhoit, these charges were waived by T. A. Gregory under an oral understanding that all escrow fees and fire insurance brokerage arising from properties owned by J. D. Willhoit would go to Title Service Company and Pacific Insurance Agency, respectively.

2. J. D. Willhoit and E. N. Frame

That between 1938 and 1940 J. D. Willhoit negotiated with the Association for 638 uninsured loans to be granted to E. N. Frame, a Los Angeles builder, in amounts totaling \$1,510,975, to finance the construction of 892 dwellings; that the loan funds were not only sufficient to defray the entire construction and land acquisition and improvement costs, but also they were in large enough amounts to permit the payment to J. D. Willhoit [14200] of $91\frac{1}{2}\%$ (approximate) fees totaling \$146,184 and the payment to one M. G. Atwood of $21\frac{1}{2}\%$ fees totaling \$37,774; that, furthermore, title expenses, interest on the loans during construction, fire insurance premiums, and a 5% (approximate) initial service fee to the Association were paid from the loan

funds; that J. D. Willhoit orally informed the examiners that he was paid the sum of \$146,184 for such services as arranging the financing, supervising the payment of construction costs, and assisting in the sale of completed properties, and that M. G. Atwood, a real estate broker representing Frame, was paid \$37,774 for such services as introducing E. N. Frame and J. D. Willhoit and for assisting in the sale of the completed properties; that these loans to E. N. Frame were evidenced by individual first deeds of trust and notes executed by various "dummies"; that E. N. Frame assumed no personal liability for these loans nor was his indebtedness to the Association disclosed on the public records (the last two of the Frame loans, granted in 1940, were also evidenced by promissory notes signed by J. D. Willhoit); that, as the 892 properties securing these loans were completed, they were sold under contract to individual purchasers; that these contracts, which required monthly payments of principal and interest, were assigned to the Association as additional security for its loans; that provision was made for the Association to collect the monthly contract payments at a fee of 25 cents per payment (this fee, as heretofore noted, was waived by T. A. Gregory in October, 1941, after E. N. Frame's interests were transferred to J. D. Willhoit); that amounts so collected were to be accumulated, the required payments on the Association's first deeds of trust deducted therefrom, and the balance paid to E. N. Frame monthly; that on January 25, 1941, E. N. Frame still owned 797 of the 892 properties which

had been constructed with Association loan funds; that substantially all of these properties were sold under contract to individual purchasers whose monthly payments were being collected by the Association, and substantially all were still subject to individual first deeds of trust; that on that date, January 25, 1941, J. D. Willhoit, according to an oral statement made by him to the [14201] examiners, offered to purchase E. N. Frame's interest in 797 properties for \$100,000; that E. N. Frame accepted this offer, settlement to be made at the expiration of sixty days from January 27, 1941; that by two grant deeds dated January 27, 1941, and recorded April 12, 1941, E. N. Frame conveyed his interest in the 797 properties to J. D. Willhoit; that, according to J. D. Willhoit, Title Service Company had advanced him \$10,000 to be used in the management of E. N. Frame's properties; that on January 28, 1941, an entry was made on the Association's books recording a loan of \$100,000 to J. D. Willhoit; that of this \$100,000 only \$10,000 was disbursed, a check dated January 28, 1941, in this amount being paid to Title Service Company; that documentary evidence could not be found to support either the \$100,000 loan to J. D. Willhoit or the \$10,000 payment to Title Service Company; that on March 21, 1941, J. D. Willhoit executed a deed of trust for \$110,000 in favor of one Cecil Crabb, a "dummy" for J. D. Willhoit, which instrument, like the grant deeds from E. N. Frame to J. D. Willhoit, was recorded on April 12, 1941; that the deed of trust from J. D. Willhoit to Cecil Crabb, contrary to the

usual practice in the Association, named Somerset Finance Corporation as trustee rather than Title Service Company (T. A. Gregory was secretary of Somerset Finance Corporation and S. I. Bacon was vice president); that Cecil Crabb assigned the deed of trust to the Association on April 12, 1941, as security for a loan of \$110,000 to J. D. Willhoit; that the assignment was not recorded thereby concealing on the public records J. D. Willhoit's relation as a borrower from the Association; that on March 21, 1941, Frame's equity in these 797 properties approximated \$498,000, representing the excesses of the amounts due from contract purchasers over the aggregate balances due on the first liens against the properties; that the loan to J. D. Willhoit of \$110,000 was used to repay the \$10,000 previously advanced to Title Service Company on January 28, 1941, and to purchase for \$100,000 E. N. Frame's approximate equity of \$498,000; that the loan files also contained the following completely executed and notarized instruments, which had not been recorded: [14202]

(a) Two grant deeds conveying the 797 properties from J. D. Willhoit to Title Service Company;

(b) Two grant deeds conveying the 797 properties from Title Service Company to J. D. Willhoit, as trustee for Title Service Company;

(c) Declaration of trust from Title Service Company, as trustor, to J. D. Willhoit, as trus-

tee, covering the 797 properties, which declaration provides, in part: That Title Service Company may at any time remove J. D. Willhoit as trustee and appoint a successor to him; that J. D. Willhoit is to manage the trust estate, and that the net income from the trust estate is to be handled according to instructions given by Title Service Company;

that following the acquisition of E. N. Frame's interests by J. D. Willhoit, the Association continued to collect monthly payments from the contract purchasers, and to deduct from the sum of those payments, the amounts due the Association on the E. N. Frame loans; that these collections were intermingled with amounts collected from contracts and first deeds of trust underlying other loans to J. D. Willhoit (which will be hereinafter discussed), thus making it impossible to determine the exact relationship between the profit accruing to J. D. Willhoit from this transaction and the cash payments which had been made to him; that a calculation of the minimum profit would indicate that there had accrued to J. D. Willhoit by March 22, 1946, the date when the \$110,000 loan was repaid, the sum of \$313,000 and that minimum profits of \$146,000 had yet to be realized; that when the Association granted the \$110,000 loan to J. D. Willhoit to enable him to acquire E. N. Frame's holdings, it granted a loan in an amount equal to 100% of the consideration paid by J. D. Willhoit; that J. D. Willhoit agreed to pay the Association \$40,-

000 out of the amounts to be collected from contract purchasers, after a sufficient sum had been collected to retire all his obligations against the properties; that on April 17, 1946, this \$40,000 claim of the Association against J. D. Willhoit was compromised for \$15,000, J. D. Willhoit assigning notes and deeds of trust in that amount to the Association in settlement; that the two loans originally granted to E. N. Frame in 1940, which were additionally secured by promissory notes signed [14203] by J. D. Willhoit, were in force at the date of this examination, and their balances aggregated \$53,143, all of the original real estate security for these loans having been released except 42 properties.

3. J. D. Willhoit, as an individual

That in addition to the \$110,000 loan to J. D. Willhoit to finance his purchase of E. N. Frame's interests, the Association had granted six other loans to him as an individual; that these loans, which were granted between 1939 and 1941, totaled \$480,593 and were secured by 354 properties; that of these loans three were in force at the date of this examination; that in none of these cases do the public records disclose that J. D. Willhoit is an Association borrower, and that the collections from individual purchasers had been intermingled with those derived from the E. N. Frame properties; that on December 31, 1940, the Association sold by assignment 66 first deeds of trust and three parcels of real estate to J. D. Willhoit at their approximate cost to the Association of \$125,340; that J. D.

Willhoit paid for this security by giving the Association his promissory note in the amount of \$125,340, this being the entire sale price, and as security for the said note he reassigned the identical deeds of trust and real estate to the Association; that the interest rate averaged 6.5% per annum on the deeds of trust, as compared with 6.0% on J. D. Willhoit's promissory note; that forty-two of the trust deeds were less than six months delinquent, fourteen were between three and six months delinquent, nine were between six and twelve months delinquent, and only one was more than twelve months delinquent at the date of sale; that only six of the trust deeds appear to have presented collection problems; that J. D. Willhoit purchased the entire group of 66 trust deeds at their total unpaid balance, which was only 55.7% of the valuations assigned by the Association's appraisers to the real estate securing them; that payments made by the individual trustors were handled by the Association for J. D. Willhoit's benefit; that the three parcels of real estate which were purchased by J. D. Willhoit for \$6,550 were later sold by him to individual purchasers; that from these sales J. D. Willhoit's potential profit was \$1,550, or approximately 24%; that at the date of this examination this loan had been reduced to \$395, all but one [14204] of the original deeds of trust having been released; that on April 1, 1941, an uninsured loan of \$278,000 was granted to J. D. Willhoit to finance the construction of 139 houses; that the loan was not only sufficient in amount to

defray all construction costs including the acquisition cost of the land, but also permitted the payment of title charges, interest on the loan during construction, and a 5% initial service charge to the Association; that as the properties were completed they were sold to individual purchasers under contract of sale, the monthly payments on these contracts being paid to the Association; that at the date of examination this loan had a balance of \$126,725 and was secured by 84 properties, the other 55 having been released; that in 1941, C. S. Jones, another of the Association's multiple borrowers, owned 140 properties subject to first deeds of trust held by the Association; that the loans evidenced by these deeds of trust had been granted to C. S. Jones in 1940 to finance construction of the properties; that on January 29, 1941, (four days after purchasing E. N. Frame's equity in 797 properties), J. D. Willhoit purchased C. S. Jones' interests in the 140 properties, and the Association disbursed \$15,750 to C. S. Jones; that no documentary support for this disbursement could be found, except for a letter of even date from C. S. Jones to the Association stating that C. S. Jones was selling his interest in the aforesaid 140 properties to the "Long Beach Federal Savings and Loan Association, or its nominee"; that on June 3, 1941, these 140 properties, and one other property which had not previously been encumbered in favor of the Association, were pledged to the Association by J. D. Willhoit as security for a loan of \$61,020;

that of this sum \$15,750 was used to repay the advance made on January 29, 1941, to C. S. Jones; that the loan of \$61,020 represented the full consideration paid by J. D. Willhoit to C. S. Jones for the latter's interests, which on June 3, 1941, amounted to approximately \$66,385, representing the difference between the amounts due from individual purchasers of the properties and the amounts due the Association on the first liens held by it; that at the date of examination this loan had a balance of \$4,858 and was secured by 53 properties, the other 88 having been released. [14205]

C. C. S. Jones, C. J. Jones and Jones Bros.
Lumber Co.

1. Identity of borrowers

That C. S. Jones and C. J. Jones are brothers and are associated in the Jones Brothers Lumber Company; that loans granted to either or both of the Jones brothers between 1937 and 1942 aggregated \$2,222,654 and were secured by 850 properties; that with the exception of an advance of \$15,750 made to C. S. Jones in connection with the sale of his interests in 141 properties to J. D. Willhoit, mentioned above, and a blanket loan of \$125,000, which is discussed hereinafter, all of the loans were granted to finance construction; that at the date of this examination there were 77 loans in force to C. S. and C. J. Jones with balances aggregating \$558,320.

2. C. S. Jones Loans

That on July 16, 1940, the Association granted a loan of \$436,000 to C. S. Jones to finance the construction of 218 dwellings; that this loan was evidenced by C. S. Jones' promissory note and was secured by individual notes and deeds of trust running from four individuals, two of whom were employees of C. S. Jones, to C. S. Jones and assigned by him to the Association; that whether or not the \$436,000 loan was also sufficient to purchase the land could not be determined; that however, at least \$44,032 was used for purposes other than construction, including \$15,000 which was applied to the repayment of two advances made in November, 1940; that this \$15,000, which had been disbursed by the Association in the form of two checks payable to Title Service Company, was recorded on the Association's books as loans to C. S. Jones; that documentary support for such loans to C. S. Jones could not be located; that on December 30, 1940, the \$436,000 loan to C. S. Jones was substantially delinquent as to interest and no payments had been made on principal; that, furthermore, many other loans then outstanding in the names of C. S. Jones and C. J. Jones were in similar condition; that on that date a loan of \$220,000 was set up on the books in the name of one R. G. Trigg (described by T. A. Gregory as an "associate" of C. S. Jones); that this loan was evidenced by R. G. Trigg's promissory note, and was secured by 100 of the 218 individual notes and deeds of trust men-

tioned in this paragraph; that these notes and deeds of trust, as [14206] previously explained, had been assigned to the Association by C. S. Jones; that some but not all of these assignments were cancelled; that C. S. Jones assigned 100 of 218 notes and deeds of trust to R. G. Trigg and the latter then assigned them to the Association; that the effect of this \$220,000 loan to R. G. Trigg was to increase the original principal indebtedness on the 218 properties from \$436,000 to \$456,000, since \$200,000 of the proceeds were applied to C. S. Jones' \$436,000 loan, thereby reducing it to \$236,000 and the new loan to R. G. Trigg was \$220,000 or a total of \$456,000 (the increase of \$220,000 is secured by additional advance notes); that the remaining \$20,000 of R. G. Trigg's loan was used to repay various delinquencies on loans in the names of C. S. Jones and C. J. Jones; that as the 218 properties securing these two loans were completed, they were sold under contract, and the payments on these contracts were collected by the Association for C. S. Jones' benefit, thereby indicating that R. G. Trigg was a nominee for C. S. Jones; that aside from a principal payment of \$2,273 made on July 8, 1941, no reduction in the principal amounts of either the C. S. Jones or R. G. Trigg loans was made until September, 1942, the loans being seriously delinquent at that date; that subsequent to September, 1942, payments had been regular; that at the date of this examination these two loans had aggregate balances of \$267,435 and were secured by 173 properties, the other 45 having been previously released;

that on May 10, 1941, the Association had in its possession a check payable to its order in the amount of \$1,000, which check, drawn by C. J. Jones, had been returned by the bank marked "not sufficient funds"; that this claim against C. J. Jones for \$1,000 was repaid with \$441 obtained from undisbursed funds on the R. G. Trigg loan, the balance of \$559 being added to a secured advance account of another borrower, which secured advance account was immediately charged-off as "Loss on Sale of Investments"; that on December 16, 1942, a loan of \$125,000 was granted to C. S. Jones, the proceeds being used to repay obligations of C. J. Jones; that this loan will be discussed in the next paragraph of this affidavit. [14207]

3. C. J. Jones Loans

That in early 1941, C. J. Jones applied to the Association for 795 FHA loans; that in connection with this application T. A. Gregory wrote on April 17, 1941, to the Federal Housing Administration relative to C. J. Jones' application, stating that C. J. Jones had placed with the Long Beach Federal Savings and Loan Association "a \$100,000 guarantee to carry to completion the proposed project." (It is significant that on May 10, 1941, the Association held a check of \$1,000 from C. J. Jones which had been returned for insufficient funds.) That T. A. Gregory in his letter also transmitted a financial statement of C. J. Jones dated April 16, 1941, showing "Cash in Long Beach Federal Savings and Loan Association — \$100,000."; that on June 19,

1941, the Federal Housing Administration wrote to Mr. T. A. Gregory requiring that C. J. Jones establish a cash bond of \$100,000 with the Association, to which letter Mr. T. A. Gregory replied two days later stating that C. J. Jones had pledged the said sum; that clipped to the side of one of the Association's loan files was a check for \$100,000 dated June 23, 1941, drawn by C. J. Jones on the Bank of America in favor of the Association; that this check had not been endorsed; that of the original 795 applications, only 120 were accepted by the Association, approximately 550 were assigned to the Bank of America and the disposition of the remainder is not known to affiant; that on July 7, 1941, T. A. Gregory wrote to C. J. Jones that the Association would release a pro rata portion of the \$100,000 guarantee; that the Association's files contained an unsigned letter to the Bank of America, dated July 14, 1941, stating that the sum of \$85,000 was being transferred to that Bank as a guarantee by C. J. Jones in connection with the approximately 550 houses which it was financing; that on July 14, 1941, the Association disbursed \$45,000 by check to C. J. Jones and on July 15, 1941, it disbursed another \$40,000 to C. J. Jones; that neither of these cancelled checks could be found; that both disbursements are stated to be for "Labor and Materials"; that both were drawn against C. J. Jones' loan funds; that on September 29, 1941, C. S. Jones assigned to the Association the sum of \$100,000 from the proceeds of the loans on the 550 houses

which the Bank of America was financing; that C. J. Jones' financial [14208] statement of July 21, 1942, submitted to the Federal Housing Administration in order to obtain an increase in the loan insurance commitments, stated that he then had cash sums of \$85,000 and \$15,000 in the Bank of America and the Long Beach Federal Savings and Loan Association, respectively, and that these sums were being held as completion bonds; that while negotiations were in process for the granting of the 120 FHA loans heretofore discussed, the Association advanced to C. J. Jones amounts totaling \$24,446; that documentary support for these amounts could not be found; that repayment was made on October 8, 1941, by J. D. Willhoit, another multiple borrower, whose loans have been previously discussed; that according to an oral statement made by J. D. Willhoit to the examiners, this repayment was made by him because he was indebted to the Jones Brothers Lumber Company for lumber which he had purchased; that on July 11, 1941, the 120 FHA loans, heretofore mentioned, were granted by the Association in the aggregate amount of \$393,850; that this sum proving insufficient, the Association advanced additional sums aggregating \$57,427 to C. J. Jones, purportedly to meet expenses due to delays in construction and increased costs, as well as to pay the 1942 taxes; that by December 16, 1942, serious difficulties were being encountered in connection with the aforesaid 120 house development; that liens aggregating \$62,000 had been filed against the properties, interest and principal pay-

ments were delinquent to the extent of \$23,456 and other deficiencies, substantially all arising from over-disbursements of loan funds, totaled \$39,544; that in order that these obligations could be discharged the Association granted a loan of \$125,000 to C. S. Jones, the proceeds of which were used to repay the items enumerated; that this loan of \$125,000 was a second blanket deed of trust secured by the properties previously pledged to the Association by C. S. Jones and R. G. Trigg, as noted in the preceding section of this affidavit, and also by 178 properties in a development financed by the Association in April, 1940; that as further security the blanket deed of trust also covered, as a first lien, two properties located on Country Club Drive, possibly the homes of the Jones brothers, since their residences are located there; that at the date of this examination the loans to C. J. Jones had an aggregate balance of \$236,762 and are [14209] secured by 74 houses; that the \$125,000 loan to C. S. Jones has a balance of \$54,123 and is secured by 293 properties against which it is a second lien, the two Country Club Drive properties having been released.

D. Jackson Turner Loans

1. Identity of Jackson Turner

That Jackson Turner, a speculative builder whose operations had been financed by the Association, had erected houses both for resale and as a contractor for various individuals, who had borrowed con-

struction loan funds from the Association; that some of the properties which he had erected were constructed with a material called Nu-Lite, which is manufactured by the Nu-Lite Co., one of the nine organizations which have used the Association's office as a mailing address; that of the 160 loans with original amounts totaling \$489,808 which were at the time of the examination in force and which had been granted by the Association for the purpose of financing Jackson Turner construction, 56 totaling \$170,200 were delinquent; that seventy-nine of Jackson Turner's loans, including 45 granted to him as a borrower to finance his speculative building operations and 34 granted to various individuals whose homes Jackson Turner had contracted to construct, were seriously over-disbursed; that not included in the foregoing 79 are six loans secured by lots on which no construction had been started at the date of examination; that loan disbursements to Jackson Turner were not supported by either vouchers or invoices; that inspections by Association appraisers had been made at irregular intervals, and the inspection reports were incomplete.

2. Loans to Jackson Turner as Borrower

That at the date of this examination 125 uninsured loans, with unpaid balances totaling \$274,461, were outstanding in the name of Jackson Turner; that these loans had been granted for the purpose of financing Jackson Turner's speculative building operations; that fifty of these loans were delinquent; that forty-five were estimated to be over-

disbursed to the extent of \$44,272, the Association having available only \$39,128 of undisbursed loan proceeds with which to pay estimated construction costs aggregating \$83,400; that in forty-one of these cases, the Association advanced the cost of the lot, Mr. Turner's only [14210] equity appearing to be the potential profit, if any, to be derived from a sale of the property.

3. Loans to Various Individuals on Properties

Where Jackson Turner was the Contractor

That at the date of this examination 35 loans with unpaid balances totalling \$198,406 were outstanding in the names of various individuals whose homes were being constructed by Jackson Turner as a contractor; that 34 of these loans were estimated to be over-disbursed to the extent of \$18,658, the Association having available only \$25,442 of the individual borrowers' undisbursed loan funds with which to pay estimated construction costs aggregating \$44,100; that 27 of these 34 loans had been granted to returning GIs under the provisions of the Servicemen's Readjustment Act of 1944, as amended; that Jackson Turner's contracts with these GIs provided no assurance that the veterans would receive a completed house in any reasonable time and the Association protected the veteran only to the extent of requiring in its deed of trust that "work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) days"; that the veteran had been required to pay interest on the full amount

of the loan during the entire construction period, which in some instances had extended for ten to twelve months without the home being ready for occupancy; that in the cases of 21 loans to veterans, a portion of the veterans' funds had been transferred to share accounts in the name of Jackson Turner without the veterans' approval, and eleven of these share accounts were subsequently paid to Jackson Turner without recorded approval by the board of directors.

E. Other Loans granted by Association

1. Moss and Company

That Mike M. Moss, on June 9, 1939, borrowed \$125,000 from the Association to finance his purchase of a group of properties from the Bureau of Power and Light of the County of Los Angeles (there were 343 properties in this purchase; the total cost to Mike M. Moss and another purchaser was \$251,000 and the Association loaned \$250,000 secured by first deeds of trust on 183 of the properties which were improved, of which \$125,000 was loaned to Mike M. Moss [14211] and \$125,000 was loaned to the other purchaser); that the Moss properties were sold to various individuals under sales contracts which were required to be pledged to the Association, the collections therefrom providing the principal means by which repayment of the \$125,000 was expected; that in addition to the pledge of the sales contracts the Mike M. Moss loan was also collaterally secured by a \$20,000 note

and deed of trust from Mike M. Moss secured by 112 of the unimproved lots purchased from the Bureau of Power and Light; that Mike M. Moss assigned the various properties to Moss and Company, in which Company Mike M. Moss then was the owner of the entire beneficial interest; that on June 15, 1939, one Joseph Weinblatt acquired a half-interest in the Bureau of Power and Light properties and on August 1, 1939, one George C. Fetterman acquired a tenth-interest; that in April, 1940, Mike M. Moss, Joseph Weinblatt, and T. A. Gregory entered into an oral agreement, as result of which Moss and Company advanced \$26,771 and T. A. Gregory advanced \$16,586 to Mike M. Moss for the purpose of financing Mike M. Moss on a trip to Mexico to secure various lucrative concessions, such as race track and gambling ventures; that this enterprise lasted until December, 1940; that during the entire period from June, 1939, to December, 1940, the loans to Moss and Company were in poor standing; that prior to April, 1940, only one month's contractual payment was made despite the fact that the properties had been sold to individual contract purchasers, and available records disclose that after April, 1940, the contract collections were largely diverted to finance the Mexican venture in which T. A. Gregory, Mike M. Moss, and Joseph Weinblatt were interested; that this situation continued until the Mexican venture was abandoned in December, 1940; that on December 31, 1940, the Moss and Company indebtedness to

the Association aggregated \$197,520 including balances due on the loans secured by the Bureau of Power and Light properties, balances due on loans granted prior to June, 1939, on properties in which Mike M. Moss was interested and miscellaneous other items, including \$2,500 additional cash advanced to Mike M. Moss on December 31, 1940, which, according to a sworn deposition by Mike M. Moss, was used by him to return to Mexico; that also at this time the Association released its claim against the lots covered [14212] by the \$20,000 deed of trust which it held as additional security; that the effect of the additional \$2,500 cash outlay by the Association and the release of the \$20,000 deed of trust was to reduce the Association's security for the seriously delinquent loans due from Moss and Company at a time when that company was indebted to T. A. Gregory; that on this same day, December 31, 1940, Mike M. Moss addressed a letter to T. A. Gregory purporting to empower the latter to move the offices of Moss and Company to Long Beach and to name directors to the board of Moss and Company, in order that he, T. A. Gregory, would have representation and could control the assets of Moss and Company; that thereafter collections from the contract purchasers were handled by the Association and from the proceeds of such collections the Association deducted its loan payments, the balance being held in a separate account for the benefit of Moss and Company; that on October 23, 1942, the assets of Moss and Company were assigned by its directors to its creditors; that included among the

creditors were Joseph Weinblatt, T. A. Gregory, George C. Fetterman, and Robert H. Wallis (Mr. Wallis, an attorney in the employ of the Long Beach Federal Savings and Loan Association, occupied rent free space in the Association's office and his secretary was paid by the Association); that on March 24, 1945, Mike M. Moss brought suit against Long Beach Federal Savings and Loan Association, T. A. Gregory, George C. Fetterman, Robert H. Wallis, Joseph Weinblatt, et al.; that Mike M. Moss asked for an accounting, cancellation of instruments and a winding up of the affairs of Moss and Company; that the plaintiff and all of the above-named defendants to this action except the Association sought to establish claims against monies held by the Association for the account of Moss and Company; that a pre-trial settlement of the case was accomplished on January 9, 1946, by the payment to Mike M. Moss of \$10,000 out of the monies held by the Association; that funds remaining for the benefit of creditors, after the repayment of the Association's loans, were disbursed as follows: Joseph Weinblatt \$16,398, T. A. Gregory \$12,887, George C. Fetterman \$5,612, and Robert H. Wallis \$2,200; that on July 24, 1945, Robert H. Wallis advised the Board of Directors of the Long Beach Federal Savings and Loan Association that in the above suit the Association "will [14213] not sustain any loss"; that Mr. Wallis also stated that the officers of Moss and Company were satisfied with the accounting furnished by the Association

and that Moss and Company's indebtedness to the Association "will be paid in full shortly"; that, between September 4, 1945, and January 19, 1946, the Association disbursed \$3,849 to two firms of attorneys in defending this suit; that a representative of the Legal Department of the Federal Home Loan Bank Administration informed affiant that these firms of attorneys both orally stated to him that their only compensation for such services was that received from the Association.

2. Paul Cawood

That a number of loans had been granted to Paul Cawood both by the Long Beach Federal Savings and Loan Association and the First Federal Savings and Loan Association of Bellflower; that these loans were granted when Paul Cawood was under 23 years of age; that, according to J. D. Willhoit, Paul Cawood was a nephew of T. A. Gregory; that these loans were as follows: that on March 3, 1937, Paul Cawood purchased a property and he then executed a deed of trust for \$20,000 secured by this property in favor of J. D. Willhoit; that J. D. Willhoit, who orally stated to the examiners that he acted as a "dummy" in this transaction at the request of T. A. Gregory and that the property was purchased for approximately \$14,000, immediately assigned this deed of trust to the Association as security for a loan of \$20,000; that the appraisal made by T. A. Gregory and Roy Wolfers (vice-president) on which this loan was based valued the property at \$30,000; that a mechanic's lien filed

against the property in August, 1937, refers to Paul Cawood, L. N. Schilling (a sister of T. A. Gregory, and a former officer of the Long Beach Federal Savings and Loan Association), T. A. Gregory, and the Association as the reputed owners of the property; that the property was transferred in 1938 by Paul Cawood to one Evadean Henry, who had participated in other real estate transactions with L. H. Schilling; that on May 3, 1946, the loan on this property was repaid, the balance then due being \$22,458.60; that three loans were granted by the Long Beach Federal Savings and Loan Association to Paul Cawood in amounts exceeding the respective purchase prices of the properties securing the loans; [14214] that these loans aggregated \$7,900 as compared with total purchase prices of \$7,575; that the Association's appraisals on which these loans were based totaled \$12,800 and were made by T. A. Gregory and Roy Wolfers; that one loan had been granted by the First Federal Savings and Loan Association of Bellflower to Paul Cawood in 1935; that Paul Cawood acquired title to the property securing this loan from J. E. Gregory on the day the loan was granted; that the loan was repaid in 1937 and the property was immediately transferred by Paul Cawood back to J. E. Gregory; that a number of other transactions involving Paul Cawood and L. N. Schilling were financed by the First Federal Savings and Loan Association of Bellflower; that on June 24, 1940, the Association transferred a parcel of real estate which it owned to Paul Cawood for \$2,350 and accepted a note and

deed of trust in full payment; that this property was valued at \$3,000 in June, 1936, that being the last available appraisal; that Paul Cawood sold this property in 1942 for a consideration of approximately \$3,150, according to revenue stamps attached to the deed.

3. Mason E. Kight

That on May 3, 1938, Mason E. Kight acquired title to a property from a local bank for \$3,500; that the Association then granted a loan of \$3,500 based on an appraisal of \$6,000 by T. A. Gregory and Roy Wolfers; that six days before the local bank was paid for the property, out of the loan proceeds, Mason E. Kight executed a deed to T. A. Gregory (no revenue stamps were attached to this deed); that T. A. Gregory occupied the property as his home; that in 1941 he sold the property for \$4,250, as compared with the appraised value of \$6,000 which he assigned in 1938; that the records of the Association have never disclosed the fact that T. A. Gregory owned this property; that Mason E. Kight acted as a "dummy" in connection with the granting of a loan to J. D. Willhoit secured by a property in which J. D. Willhoit resided; that, except for a war damage insurance policy found in the Association's files, none of its records disclosed J. D. Willhoit's ownership of this property; that in 1939 a state-chartered association, located in Long Beach, was being liquidated; that in connection with the liquidation, twenty-one deeds of [14215] trust were purchased in Mason E. Kight's name; that the

Association loaned \$46,688, the full purchase price of these deeds of trust, to finance this transaction, accepting as security a note from Mason E. Kight and a pledge of the twenty-one deeds of trust; that Mason E. Kight's note bore interest at 6.5% and the trust deeds earned interest at an average rate of 6.8%; that the profit on this transaction, \$633, representing the differential in interest, was paid to J. D. Willhoit; that J. D. Willhoit stated that Mason E. Kight had acted as "dummy" for him (J. D. Willhoit) in this transaction.

4. Jack and Carolyn Stanaland

That Carolyn Stanaland, a sister of T. A. Gregory and a daughter of J. E. Gregory, was the wife of Jack Stanaland; that Jack and Carolyn Stanaland were vice president and assistant secretary, respectively, of the First Federal Savings and Loan Association of Bellflower whose directors were also directors of the Long Beach Federal Savings and Loan Association; that the Stanalands had obtained six uninsured loans totaling \$25,200 from the Long Beach Federal Savings and Loan Association at interest rates from $1\frac{1}{2}\%$ to 1% lower than the prevailing rate charged by the Association on uninsured loans; that four of these loans, which were secured by properties not occupied by the Stanalands as their home, could not have been legally granted under its charter by the First Federal Savings and Loan Association of Bellflower; that the Stanalands had also engaged in other real estate operations which involved the purchase of six prop-

erties from borrowers of the Association subject to existing loans payable to the Long Beach Federal Savings and Loan Association.

5. Du Crete Company

That this company was one of nine organizations which had used the Association's office as a mailing address; that among its principals was one Leland MacArthur, a disbarred California attorney, who had an eighth interest in Du Crete Company; that, according to testimony given before the California State Bar, Leland MacArthur's sole income during 1941 was \$200 per month borrowed from T. A. Gregory, at the time Leland MacArthur was promoting Du Crete Company; that three uninsured loans to Du Crete Company were granted during 1941 to finance the construction of twelve houses; that construction of these [14216] houses was not completed and in July, 1942, the Association foreclosed its deeds of trust; that the properties were subsequently sold by the Association without loss; that in an unsuccessful attempt to negotiate a prior sale the Association incorporated provisions to the effect that liens against the defaulting borrower, Du Crete Company, be satisfied out of the sales proceeds.

F. Sales of Loans to Individuals

That between March 1, 1940, and May 18, 1946, the Association sold 286 uninsured loans to various individuals, including 173 to one Merle Reynolds from whom the Association bought its office build-

ing; that these loans, at the date of sale aggregated \$579,874, and represented 54% of the last available Association appraisals; that of the 286 loans sold, 90% bore interest at rates of 6% per annum or higher, and 257 were contractually current at the date of sale, 26 were one month delinquent, and the remaining three were only two months delinquent; that all such loans were sold at par, no profit on such sales being reflected on the Association's records; that all loans sold, except nine, were subsequently serviced by the Association for the purchaser, many being serviced without charge to the purchaser, and the remainder being serviced for only 25 cents per payment; that one of the loans sold was secured by a property formerly in the name of Paul Cawood, a nephew of T. A. Gregory according to J. D. Willhoit; that this property was conveyed to Paul Cawood in May, 1937, by a local bank which had acquired it through a foreclosure action against one George S. Baker; that immediately following acquisition Paul Cawood executed a \$25,000 deed of trust in favor of L. N. Schilling (sister of T. A. Gregory); that in December, 1937, Paul Cawood transferred the property to one Leva M. Mandy, and the Association granted a \$15,000 loan in connection with this transfer, which loan was based on an appraisal of \$30,000 by T. A. Gregory and Roy Wolfers; that George S. Baker brought suit against L. N. Schilling, T. A. Gregory, and Paul Cawood, alleging that he (Baker) had called upon T. A. Gregory for assist-

ance in preventing the foreclosure action, alleging that T. A. Gregory had referred him to L. N. Schilling as a real estate broker, alleging that T. A. Gregory did not disclose that L. N. Schilling was his (Gregory's) sister, alleging that subsequently Paul Cawood [14217] became owner of the property, giving L. N. Schilling a \$25,000 deed of trust, the proceeds of which were used to purchase the property, and alleging that, as a result of the fraud of T. A. Gregory and L. N. Schilling, he (Baker) had suffered a loss of over \$15,000; that in his answer to this suit T. A. Gregory, on October 25, 1938, stated, in two separate instances, that the property was worth \$20,250; that, as above noted, T. A. Gregory valued this same property in December, 1937, for \$30,000 as a basis for granting a loan to Leva M. Handy; that the suit of the Bakers against T. A. Gregory, et al., never came to trial, a "Dismissal with Prejudice" being entered on December 21, 1938; that Robert H. Wallis, the Association's attorney, resided in this property, a small apartment house; that it had been operated by Association employees since 1941, and was referred to on invoices in the Association's files as the "Wallis Apartments"; that the loan to Leva M. Handy was sold by the Association in February, 1946.

Real Estate Sales

7. That the Association had effected 56 sales of real estate from January 1, 1938, to the date of the examination; that, based on the last available appraisals, 55 of these properties were sold for

amounts \$36,420 less than the valuations assigned by the Association's appraisers; that the aggregate sales prices totaled \$127,597, of which only \$18,001 represented cash, the balances being financed by the Association for the purchasers; that included among these sales were thirteen properties sold to J. D. Willhoit for \$24,822 which properties were sold by him to various individuals for \$34,380, J. D. Willhoit's potential profit being \$9,558; that the sales by J. D. Willhoit were all effected within very short periods of time after he acquired the properties; that also included among the 56 sales was one which J. D. Willhoit sold as a broker for the Association, and on which he was paid a commission of 14% of the sales price; that four of the 56 sales were made to Association employees; that these properties were sold at their approximate cost to the Association, \$10,650, as compared with their appraised values of \$14,000, and in each instance the employee purchaser financed the entire purchase by giving the Association a note and deed of trust in an amount equal [14218] to the purchase price; that two of these properties which had been sold by the Association for \$5,350 were subsequently resold by the employee for \$6,800; that one of these properties was conveyed by the Association to a "dummy" for Vice President Ethel L. Roberts, and was then conveyed by this "dummy" to Mrs. Roberts; that this property was sold for \$3,000 as compared with the Association's valuation of \$4,200; that the property in question was the home of Mrs. Roberts; that,

in addition to properties heretofore discussed, seven were sold by the Association to individual purchasers for \$16,157, who within periods not exceeding one year, resold the properties to other persons for \$19,355.

Inadequately Explained and/or Questioned Expenses

8. A. In General

That the Association's records do not reveal sufficient information in numerous instances to permit of a determination as to the propriety, as a charge against the Association, of many of the expenses which it has paid; that it also appears that certain legal fees had been improperly charged against the Association; that invoices were not in the files to support many of the items paid, and Association vouchers were often missing or the explanations of expenses appearing thereon were either lacking or inadequate; that where expenses were supported by either vouchers or invoices it was found that frequently approval of the payment was not indicated on either the voucher or the invoice; that in those cases where the items were supported by approved vouchers or invoices such approvals were usually given by T. A. Gregory or Ethel L. Roberts; that approvals of expenses by the Board of Directors consisted of ratifying a monthly statement of such expenses which merely indicated the total of each class of expense, by account title, during the preceding month without indicating the identity of the payee or specific information as to the purpose

of the disbursement; that such expenses, i.e., those which were either inadequately explained or questioned, had been classified into four groups, each of which will be discussed separately in the following paragraphs.

B. Disbursements to Gasoline Service Stations.

That between January, 1943, and June, 1945, expenses were paid by check to [14219] several gasoline service stations amounting to \$7,050; that the majority of these checks were endorsed by Leland MacArthur and many were cashed by the Association; that Leland MacArthur, a disbarred attorney, who was active in local politics, was connected with the Du Crete Company as heretofore noted; that among disbursements to these service stations were such items as \$276 paid May 23, 1944, for "Gal. 1400"; \$250 paid June 2, 1944, "on acct. adv. purchased"; and \$270 paid July 7, 1944, for "1500 gal. Hi Octane @ 18c"; and \$800 paid June 13, 1945, for 4000 gallons of gasoline; that at no time during this period had the Association owned more than seven automobiles.

C. Disbursements Involving Lorne D. Middough

That between July, 1943, and May, 1946, expenses totaling \$3,275 were paid by check to Lorne D. Middough or to either of two organizations with which he was connected, namely, the Future Citizens Foundation and the Novelty Advertising Company.

or on behalf of one of them; that Mr. Middough represented the 70th California District in the State Legislature and the two organizations named operated from the office building owned by the Association; that among the disbursements made to either Lorne D. Middough or the organizations named were such items as \$176 paid to the Future Citizens Foundation in 1943 explained as "for services rendered and expenses week of Oct. 17th;" \$169 paid in 1945 to Novelty Advertising Company explained as "Advertising and mailing charges," and \$283 paid in 1945 for "Government postal cards, printing and addressing as per agreement;" that a copy of the agreement referred to could not be found.

D. Legal Fees

That between January, 1938, and May, 1946, fees totaling \$13,779 were paid to fifteen attorneys, including the fees paid in the Moss and Company case heretofore discussed; that at least \$4,737 in fees were paid in connection with matters in which the Association had no apparent interest; that in many instances these fees were paid in matters involving either T. A. Gregory or L. N. Schilling.

E. Other Inadequately Explained or Questioned Expenses

That in this group are included various expenses paid between 1938 and 1946 which total \$7,305; that such items included \$69 paid in 1943 in connection with the settlement of the estate of former

Director J. S. Watts, \$300 paid in 1943 to one Mrs. C. V. Langley "In full settlement of all claims against S. I. Bacon and Mrs. Leland Atherton Irish as per settlement of claim," and two amounts of \$100 each paid in May, 1945, and April, 1946, to a Dr. John S. Crowder explained as "Services rendered for advertising" and "Services rendered."

Billboard Advertising

9. That nine billboards rented by the Association were used for political advertising on behalf of two candidates for election in the California primary election held on June 3, 1946; that no authority for the use of the billboards for this purpose could be found in the Association's records; that reimbursement of the expense incurred by the Association for the use of these billboards was effected on May 20, 1946, in the form of cash given to one of the Association's tellers by Ethel L. Roberts with instructions to enter the same as "Reimbursement for Release of Billboard Advertising for period of three weeks ending June 5, 1946."

Travel and Legal Expenses Incurred by T. A. Gregory

10. That, from September 11, 1945, to March 7, 1946, expenses in the total amount of \$16,905 were incurred by Thomas A. Gregory; that of this amount \$14,500 was charged to travel expense and \$2,405 was charged to legal services; that except as hereinafter noted the Association's files contained no explanation as to the nature of the services rendered; that the legal expense of \$2,405 was paid to

Howard S. Leroy, an attorney in Washington, D.C.; that the minutes of the meeting of the board of directors held on March 13, 1946, after all of these expenses had been disbursed, set forth that Mr. Gregory incurred the expenses in connection with his activities as a member of a committee appointed by the board of directors of the Federal Home Loan Bank of Los Angeles; that the board of directors of the Association had approved his trips to Washington and the payment of legal expenses to Mr. Leroy; that Mr. Gregory was reported in the minutes to have stated that in his judgment all the expenses were properly chargeable to the Association, [14221] but nevertheless he wished to reimburse the Association for such expenses; that the board of directors was reported in the minutes to have reluctantly agreed to his doing so; that the minutes of the meeting of the board of directors held on January 16, 1946, stated that Thomas A. Gregory "shall be paid extra compensation for his services as President of the Association during the year 1945 the sum of \$11,750.00," and further, "that effective January 1, 1946, the annual compensation of T. A. Gregory as President of the Association be and the same is hereby fixed at the sum of \$20,000;" that pursuant to the foregoing resolution T. A. Gregory was to be paid \$11,750 for 1945 and \$2,356 for the first three months in 1946, or a total of \$14,106; that this amount, \$14,106, was applied against the expenses incurred by T. A. Gregory of \$16,905, leaving a balance of \$2,799 which sum was paid in cash; that

these entries were not recorded until April, 1946, although the compensation increase was reported in the minutes to have been approved in January, three months earlier; that the rules and regulations require Federal savings and loan associations to file monthly reports showing their financial condition; that such reports were filed by this Association as of the end of January, February, and March, 1946, over the signature of Ethel L. Roberts, vice president and assistant secretary; that these reports do not reflect the liability for increased compensation to T. A. Gregory approved by the board of directors on January 16, 1946, which on March 31, 1946, had accumulated to \$14,687.

Resolutions Recorded in Minutes of Board of
Directors Dated May 8, 1946

11. A. Attendance

That at the meeting of the board of directors of the Association, held on May 8, 1946, all directors were present according to the minutes which were signed by J. E. Gregory and no dissenting votes were shown.

B. Leasing of Rolston Hotel

That on December 31, 1940, the Association purchased an office building from one Merle Reynolds for a consideration of \$110,000; that this property was conveyed by Merle Reynolds to the Somerset Finance Corporation, of which S. I. Bacon and T. A. Gregory were Vice President and Secretary, respectively, and that corporation conveyed the

property to the Association; that the [14222] purpose of the conveyance to the Somerset Finance Corporation is not clear; that the building had three stories with three store fronts on American Avenue and two separate stores in the rear facing on a small alley; that two of the American Avenue stores were used by the Association as its office quarters; that the third store on American Avenue was used as the lobby of the Rolston Hotel, which hotel also included eighty rooms on the second and third floors; that one of the alley stores was occupied by J. D. Willhoit, and the other by a sign painter; that from the date of purchase the Association operated the hotel, deriving net income as follows:

1941\$ 6,125
1942 9,520
1943 14,247
1944 19,808
1945 20,641
1946\$6,374 (to May 8);

that in 1942 the Federal Home Loan Bank Administration informed the Association that the "ownership and operation of a hotel business is not incidental to the express or implied powers of the association" and directed that the Association "should be divested of this ownership and operation as promptly as can be done without injury to the association;" that in reply to this supervisory direction the board of directors adopted a resolution which is quoted in part as follows:

“The matter resolved itself down to the association doing one of three things (1) sublet the hotel, in which event it would have all of the liabilities for accidents or damage suits almost to the same extent it has now; (2) close the hotel; (3) continue to operate it until some other satisfactory solution can be found.

“It appeared to be the opinion of all those present that the third solution was the only one that could be properly followed * * * ”;

that the minutes of May 8, 1946, contain a resolution authorizing the leasing of the Hotel Rolston to one George Turner (Mr. Turner in 1946 purchased a business known as the Crystal Radio and Engineering Company from T. A. Gregory); that one section of this resolution states that “the income from the hotel shows a continuing decrease and it appears that it will be down to a nominal sum in the very near future * * * ”; that this statement is not supported by the [14223] net income figures set forth above; that the lease was for a period of twenty years beginning May 8, 1946, at a rental of 50% of the net proceeds from the property after the payment of expenses, costs and charges; that the lease further provided that the “Lessee shall be the sole and exclusive judge of management and expenditures made hereunder; and that said Lessor shall be entitled only to an accounting and the payment of one-half ($\frac{1}{2}$) of the proceeds from said property monthly;” that J. D. Willhoit orally stated to the examiners that he had

been offered a lease on this hotel by T. A. Gregory a day or two after May 15, 1946; that, furthermore, the hotel manager had received no instructions to discontinue his usual practice of remitting the hotel room rents daily to the Association until May 20, 1946, although the effective date of the lease was May 8, 1946.

C. Lease of Two Alley Stores to J. D. Willhoit

That J. D. Willhoit occupied a small store in the rear of the Association's office building for several years prior to May 15, 1946; that this space was given to Willhoit rent free by the Association; that an adjoining store was occupied by a sign painter who paid the Association \$12.50 per month on a month-to-month basis; that the minutes, dated May 8, 1946, contained a resolution approving a lease to J. D. Willhoit for a ten-year term at a monthly rental of \$30.00 for the two stores, one of which was occupied by J. D. Willhoit and one by the sign painter; that the effective date of this lease was May 15, 1946; that, according to an oral statement made to the examiners by J. D. Willhoit, he knew nothing of this lease until May 15, 1946, on which day he was offered the opportunity to rent the space by T. A. Gregory.

D. \$100,000.00 Resolution

That the minutes of the board of directors, dated May 8, 1946, contained a resolution appropriating a sum of \$100,000 which provided that "the officers

of this association be and they are hereby authorized to employ legal counsel to conduct appropriate legal proceedings to restrain said Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of this association's affairs * * * ''; that this examination was started at noon on Saturday, May 18, 1946, after the close of business; that [14224] included in one of the teller's cash drawers was a cashier's check payable to the Association in the amount of \$50,000, which had been obtained in exchange for a check of the Association in like amount; that upon inquiry by the examiners, T. A. Gregory stated that this cashier's check was to be used to purchase building materials for one of the contractors whose operations were being financed by the Association; that subsequent inquiry and investigation revealed that the said cashier's check was given to the teller by Ethel L. Roberts immediately after the arrival of the examiners, and before the cash was counted, and that shortly after the cash count was completed T. A. Gregory asked the teller to return the check to him and this was done; that on Monday, May 20, 1946, after the appointment of a conservator by the Federal Home Loan Bank Administration, S. I. Bacon exchanged the said cashier's check at the Association's depository for another cashier's check in like amount payable to the order of Robert H. Wallis, attorney for the Association.

Issuance of 21,000 Share Accounts

12. That on May 18, 1946, at the time this examination was started, the Association's employees were in the process of issuing 21,000 share accounts in the amount of one dollar each; that due to a shortage of supplies the usual bookkeeping records had not been established, and the examiners were furnished with typewritten lists showing the account numbers to be assigned to each such share account and the names of the persons to whom they were to be issued; that these lists indicated that fifty accounts of one dollar each were to be issued in the name of J. E. Gregory, S. I. Bacon, Mrs. S. I. Bacon, T. A. Gregory, and M. T. Killingsworth, as individual trustees for various persons, or in pairs with each other or other persons, as joint trustees for various persons; that except for \$100 all of the funds necessary to purchase the said 21,000 accounts came from repurchases of other share accounts in the Association belonging to the individuals named, or from Title Service Company, and Pacific Insurance Agency.

Appointment of Conservator

13. That the examination and audit was started at noon on Saturday, [14225] May 18, 1946, at the close of business; that, before the opening of business on Monday, May 20, 1946, a conservator, appointed by order of the Federal Home Loan Bank Administration, took possession of the Association; that during the course of the examination and audit

it was necessary to refer to information previously furnished to the supervisory authorities, in writing, by T. A. Gregory, and it was noted that many of the statements made by T. A. Gregory were of an equivocal nature; that as the examination and audit approached a conclusion T. A. Gregory was requested to discuss the matters covered by the examination and audit report, but declined to do so except on the basis that any questions be submitted to him in writing; that this procedure would have resulted in endless correspondence over a prolonged period of time, thereby rendering such a program impractical; that from time to time during affiant's examination of said Association, commencing on said May 18, 1946, said affiant reported facts revealed and discovered in the course of said examination, as in this affidavit set forth, to the Federal Home Loan Bank Administration.

/s/ R. J. STRECKER.

Subscribed and sworn to before me this twenty-second day of April, 1949.

[Seal] /s/ PAUL PFEIFFER, JR.,
Notary Public.

My Commission expires Oct. 15, 1952.

[Endorsed]: Filed March 20, 1950. [14226]

[Title of District Court and Cause.]

District of Columbia—ss.

AFFIDAVIT OF JOHN M. WYMAN

John M. Wyman, being first duly sworn on oath, deposes and says:

I.

That he is Chief Supervisor, employed by the Home Loan Bank Board and that under the regulations and direction of said Board he is responsible for the [14228] supervision of all Federal savings and loan associations and for the analysis of all reports of supervisory examinations. That he has occupied such position for nearly fourteen years.

II.

(1) That in the month of July, 1945, the supervisory examination of defendants and cross-complainant Long Beach Federal Savings and Loan Association was made by examiners of the Federal Home Loan Bank Administration and that within a few months following said examination said examiners made a report thereof.

(2) That this report showed said Association had paid to one John D. Willhoit a sum in excess of \$312,000 representing net proceeds of payments on real estate contracts which had been purchased by said John D. Willhoit from one E. N. Frame, the total consideration for which had been loaned to said John D. Willhoit by said Association, but that said Association had received no part of any net proceeds of collections under said real estate

contracts notwithstanding the fact that said Association had a proprietary interest in such net proceeds by virtue of a certain agreement between said John D. Willhoit and T. A. Gregory, President of said Association and acting on its behalf.

(3) That, because of said agreement and proprietary interest and because the said proprietary interest was not recorded as an asset of the said Association, affiant advised Harold Lee, Governor of the Federal Home Loan Bank System, and John H. Fahey, Federal Home Loan Bank Commissioner, that the payment to said Willhoit by said Association of more than \$312,000 of net proceeds from the said contracts without the payment of any net proceeds from such contracts to the Association raised a question as to the disposition, and as to possible misuse, of such asset.

III.

That affiant on or about the 1st day of March, 1946, informed said Harold Lee and John H. Fahey that said Association had failed to file copies of the audit of said Association made by F. W. LaFrentz & Company, certified public accountants of Los Angeles, California, as of the close of business on [14229] May 19, 1945, or thereabouts, as required by Section 203.2 of the Rules and Regulations for the Federal Savings and Loan System.

IV.

That affiant on or about said 1st day of March, 1946, further stated and reported to said Commissioner John H. Fahey and said Governor Harold

Lee the fact that affiant had previously informed them regarding said T. A. Gregory's activities in connection with the Reliable Building-Loan Association of Long Beach, California, as follows:

(1) That sometime during the year 1945 affiant had been informed for the first time that said Gregory had during the year 1934 acquired control of said Reliable Building-Loan Association through the purchase of stock of said Association and had assumed the management thereof.

(2) That said T. A. Gregory and his father, J. E. Gregory, also owned all or approximately all of the stock of the Somerset Finance Company located at Bellflower, California.

(3) That between March 17, 1934, and May 7, 1934, the Somerset Finance Company purchased through brokers at a total cost of \$11,120.29 Reliable Building-Loan certificates having a face value of \$27,683.39.

(4) That, although these certificates were thus acquired by the said Gregorys at prices ranging from 35½ to 45 cents on the dollar, the Gregorys cashed these certificates at the Reliable Building-Loan Association at 100 cents on the dollar.

(5) That at the time of purchasing said certificates and cashing the same through said Reliable Building-Loan Association and while in full control of the management of said Reliable Building-Loan Association said Gregorys refused to cash certificates of other certificate holders of the Reliable Building-

Loan Association, thus forcing such other certificate holders and depositors to sell their certificates on the open market at prices far below their face value.

(6) That while said Gregorys were thus buying said certificates of said Reliable Building-Loan Association at prices ranging from 35½ to 45 cents on the dollar, said Reliable Building-Loan Association, through said [14230] T. A. Gregory, rendered quarterly reports to the California Building and Loan Commissioner as of March 31, June 30, and September 29, 1934, which said quarterly reports showed the Association's investment certificates to be worth 100 cents on the dollar.

(7) That each of said quarterly reports included a certification signed by said T. A. Gregory which stated:

“The undersigned, first being duly sworn, each deposes and says: That he has read the foregoing and within report, and that to the best of his belief and knowledge, the assets are set forth therein at their true value, all known liabilities including accrued and contingent liabilities are set forth therein, provision has been made for all known or probable losses by writing same off or setting up special reserves therefor, no information has been withheld and all information requested by this report has been given, and all other matters therein set forth are correctly stated.”

(8) That at the time of filing his application for permission to organize a Federal savings and loan

association, to wit on the 15th day of May, 1934, said T. A. Gregory represented to the Federal Home Loan Bank Board that he was a person of good character and responsibility and made no disclosure in said application of the facts hereinabove set forth.

V.

(1) That prior to the 18th day of March, 1946, affiant recommended to said Harold Lee and John H. Fahey that a further examination be made of said Long Beach Federal Savings and Loan Association.

(2) That accordingly a limited special examination of said Association was made on or about April 23, 1946; that following said examination of April 23, 1946, a report thereof was made by the examiners; that said report set forth, among other things, the following:

(a) During the period from September 11, 1945, to March 7, 1946, disbursements of funds of said Association totaling \$14,500 were made to its President, T. A. Gregory, without proper voucher therefor, or explanation thereof in the records of the Association, itemized as [14231] follows:

9/11/45	T. A. Gregory	\$1,000.00
10/22/45	Wired to T. A. Gregory, Wash., D. C.....	1,000.00
11/ 5/45	Wired to T. A. Gregory, Wash., D. C.....	1,000.00
11/24/45	T. A. Gregory.....	1,000.00
12/ 1/45	Wired to T. A. Gregory, Wash., D. C.	2,000.00
1/19/46	T. A. Gregory.....	2,000.00
1/31/46	Cash (Wired to T. A. Gregory)	1,500.00
2/20/46	Cash (Wired to T. A. Gregory at Wash., D. C.)	2,000.00
2/28/46	Cash (Wired to T. A. Gregory at Wash., D. C.)	2,000.00
3/ 7/46	Cash (Wired to T. A. Gregory at Wash., D. C.)	1,000.00
Total		<u>\$14,500.00</u>

(b) Funds of the said Association totaling \$2,455.60 were disbursed to Howard S. Leroy, an attorney at law at Washington, District of Columbia, on or about January 30, 1946, January 31, 1946, and March 6, 1946, although said attorney had not been retained by the said Association, nor were such funds paid to said attorney for the handling of any business of the said Association, or otherwise for the benefit of said Association.

(c) The board of directors of said Association attempted in the following manner to relieve T. A. Gregory from accountability to the said Association for its funds used by him for purposes beyond the scope of the said Association's business:

(i) The said Board of Directors, according

to the minutes of a special meeting dated January 16, 1946, voted to compensate T. A. Gregory retroactively in the sum of \$11,750 for services rendered by him in 1945, for which the said T. A. Gregory had already been paid in accordance with the terms of his employment.

(ii) The said Board of Directors, according to the minutes of the special meeting, dated January 16, 1946, voted to increase T. A. Gregory's salary from \$8,250 to \$20,000 per year, effective January 1, 1946.

(iii) On April 6, 1946, reimbursement of said Association's funds paid to T. A. Gregory and used by him for purposes beyond the scope of the Association's business, was recorded on the books of said Association by means of an offset against the purported liability [14232] of the Association to T. A. Gregory for the said sum of \$11,750 and for the voted increase for the first three months of 1946.

(d) The records or statements of the Association were untrue in that either

(i) The minutes of the Board of Director's meeting of January 16, 1946, had been falsified by the entry therein of action purported to have been taken by said Board on that date increasing T. A. Gregory's salary from \$8,250 to \$20,000 per year and authorizing the payment of \$11,750 to T. A. Gregory as extra compensation for the year 1945;

or

(ii) The said Association's liabilities were

misrepresented to the Federal Home Loan Bank Administration by monthly reports filed by said Association with said Administration for the months ending January 31, 1946, February 28, 1946, and March 30, 1946, because said reports did not disclose any liability to said T. A. Gregory for the amounts purportedly voted to him on January 16, 1946.

(3) That affiant immediately upon receipt of said report advised John H. Fahey and Harold Lee of the facts hereinabove set forth and the full contents and information contained in said report and each and every part thereof.

VI.

(1) That thereafter and sometime during the early part of May, 1946, affiant was instructed by said John H. Fahey and Harold Lee to direct a further examination and an audit of the books and records and affairs of said Association.

(2) That accordingly affiant directed that such examination and audit be made and such examination was commenced as of the close of business May 18th, 1946.

(3) That said examination and audit was commenced at noon of said date and that at the approximate hour of 11 p.m. on said date the examiners designated to make said examination and audit reported to A. V. Ammann, Assistant Chief Supervisor for said Federal Home Loan Bank Adminis-

tration certain facts which [14233] they had then discovered in the course of their examination.

(4) That as a result of said report said A. V. Ammann did, on the 19th day of May, 1946, report by telephone to Ray E. Dougherty, Associate General Counsel for the Federal Home Loan Bank Administration, the contents of said report, which was substantially as follows:

(a) The Board of Directors of said Association on May 8, 1946, appropriated the sum of \$100,000 of the funds of said Association for the purpose of instituting litigation against the Federal Home Loan Bank Administration, and threatened the removal of said sum from the proper control of said Association.

(b) Certain directors of said Association, namely: T. A. Gregory, J. E. Gregory, M. T. Killingsworth and S. I. Bacon, on or about May 18, 1946, were in the act of converting their shareholdings and other funds totaling approximately \$21,000 into approximately 21,000 separate share accounts of \$1.00 each for the purpose of obtaining a greater voting power on matters requiring approval by the Association's members as provided by the Association's charter and the Rules and Regulations for the Federal Savings and Loan System.

(5) That on May 19, 1946, at about the hour of 11:00 a.m., the said Ray E. Dougherty advised the said Harold Lee, affiant and others, at a meeting held at that hour in the offices of the Federal Home Loan Bank Administration in Washington, D. C.,

of the facts hereinabove set forth as telephoned to him, said Ray E. Dougherty, by said A. V. Ammann.

VII.

That said examination and audit was further continued following said 18th day of May, 1946, and on the 20th day of May, 1946, said examiners reported that during the course of the regular examination and the audit commenced on May 18, 1946, they found that a director and officer of said Association had, without accounting therefor or making any record of such removal, removed a cashier's check in the amount of \$50,000 payable to said Association and representing funds belonging to it. [13234]

VIII.

That following the appointment of the conservator for the said Association said examination and audit continued for a period of several months and during the course of said examination and audit, the following transactions, among others, by the directors and officers of said Association were disclosed:

(1) The Title Service Company, owned by directors of the said Association as individuals, and Pacific Insurance Agency, owned by T. A. Gregory, President of said Association, as an individual, used space and personnel provided by said Association without paying the Association any compensation therefor; no part of the income derived by either Title Service Company or Pacific Insurance Agency was paid to the said Association; the aggregate annual salary of employee of the Association who also

served Title Service Company and Pacific Insurance Agency was \$37,900.00 as of May 18, 1946; said Association's funds were thus directly used for the personal benefit of T. A. Gregory and of other directors of said Association.

(2) In October, 1941, said Association, without consideration to it, discontinued charging one of its borrowers, John D. Willhoit, a collection fee of 25c for each payment received by it from each of several hundred individuals who had purchased from said Willhoit the properties underlying the Association's loans to him; that the consideration for discontinuing the 25c collection charge was that all escrow fees and all fire insurance business arising from the properties underlying the said loans would inure to the benefit of the Title Service Company and Pacific Insurance Agency, respectively, there being no consideration whatever to the Association.

(3) Between September 4, 1945, and January 19, 1946, said Association disbursed \$3,849.00 to pay for legal services rendered principally to T. A. Gregory as an individual in defending a lawsuit against T. A. Gregory, individually, in which the Association was only a nominal party; the Association had previously been advised by its attorney that the Association "will not sustain any loss" in connection with the said suit; T. A. Gregory had substantial personal financial interest in the defense of the lawsuit, which personal [14235] interest was not connected with said Association.

(4) Said Association purchased an office build-

ing, which included a hotel, on December 31, 1940, for the sum of \$110,000; in May, 1946, the Association leased said hotel to one George Turner for a term of 20 years for a consideration of one-half of the net proceeds realized from its operation; the resolution by said Association's Board of Directors approving this lease was grounded in part on the statement in such resolution that "the income from the hotel shows a continuing decrease and it appears that it will be down to a nominal sum in the very near future;" the net income derived by the Association by operating such hotel had, in fact, shown a steady increase, as the following schedule of net income discloses:

1941	\$ 6,125.00
1942	9,520.00
1943	14,247.00
1944	19,808.00
1945	20,641.00
1946	\$6,374.00 (to May 8);

by the terms of said lease the Association forfeited any real control over the income from the property and left such income completely to the mercy of the lessee, inasmuch as the said lease provided that the "Lessee shall be the sole and exclusive judge of management and expenditures made hereunder; and that said Lessor shall be entitled only to an accounting and the payment of one-half ($\frac{1}{2}$) of the proceeds from said property monthly."

(5) During the years 1938 to 1941, inclusive, the Association made loans to two borrowers aggre-

gating more than \$3,800,000, which amount was more than 47% of the total amount of loans on the Association's books at December 31, 1941; an additional sum of \$487,200 was loaned in 1942 to one of these borrowers, making the total amount loaned to them approximately \$4,287,000, which amount was slightly less than 59% of the total amount of loans held by the Association at December 31, 1942; neither of these two borrowers had any real equity in the properties underlying the Association's loans; the amount loaned by the Association to one of these borrowers, in the original amount of \$1,510,975 to finance the construction of 892 houses, was not only sufficient to defray the entire cost of acquiring and improving the land and of [14236] constructing the houses, but was also sufficient to provide for the payment of title expenses, interest on the loans during construction, and fire insurance premiums, and, in addition, was sufficient to provide for the payment of fees equal to approximately 17% of the amount loaned.

(6) Shortly before the appointment of a conservator, the Association made numerous construction loans to one Jackson Turner, or to borrowers, most of whom were veterans, for whom Jackson Turner had contracted to build homes; in many instances the said Jackson Turner loan accounts had been substantially overdrawn; disbursements of the proceeds of the said Jackson Turner loans were made by the Association without adequate inspection and reports as to the progress of construction; sub-

stantially more funds than were initially loaned and advanced by the Association were necessary to complete the construction of the properties by said Jackson Turner; in connection with twenty-one of the Jackson Turner construction loans a portion of the veterans' funds was transferred to share accounts of said Association in the name of Jackson Turner without approval by the veteran in any instance, and eleven of these share accounts were subsequently paid to Jackson Turner by said Association.

(7) Notwithstanding the provision in said Association's charter which, in the interest of the individual home owner and of the general public, permits each borrower to prepay his loan at any time, said Association under the management of the said T. A. Gregory loaned a large amount of money at an interest rate of $4\frac{1}{2}\%$ to building concerns for the construction of many homes to be sold at a profit by such concerns on contract for deed at an interest rate of 6% or $6\frac{1}{2}\%$ and with contract provisions which prohibited prepayment and prohibited the assignment or transfer of the vendee's interest without the consent of the vendor, which consent was generally denied or given only upon payment of a bonus; many of these properties were sold to war workers who were obliged to acquire shelter under the compulsions of national necessity and a severe housing shortage.

(8) In order to qualify for insurance under Title VI of the National Housing Act, one C. J. Jones, Long Beach, California, on or about April

16, 1941, represented to the Federal Housing Administration that his assets [14237] included "Cash in Long Beach Federal Savings & Loan Association pledged as bond until completion of construction . . . \$100,000.00;" the said C. J. Jones did not on April 16, 1941, nor at any date approximate thereto, have in said Association \$100,000 or any approximate amount of "cash * * * pledged as bond until completion of construction" or any equivalent thereof; on or about April 17, 1941, said T. A. Gregory, as President of the Long Beach Federal Savings and Loan Association, transmitted and submitted to the Federal Housing Administration a copy of the financial statement of C. J. Jones of April 16, 1941, wherein C. J. Jones represented, as above stated, that he had \$100,000 in cash in the Long Beach Federal Savings and Loan Association pledged as bond until completion of construction; in transmitting and submitting the said financial statement to the Federal Housing Administration said T. A. Gregory stated, among other things, that: "An analysis of his Financial Statement will demonstrate to you that he has pledged with this institution a \$100,000 guarantee to carry to completion the proposed project;" on June 19, 1941, the Federal Housing Administration advised said Association, among other things, that the said C. J. Jones must "establish a \$100,000 cash bond with the mortgagee to guarantee the completion of the proposed project;" on June 21, 1941, the said T. A. Gregory stated to the Federal Housing Administration in writing that: "This will confirm that the applicant,

Mr. C. J. Jones, has executed and delivered to this institution an agreement pledging the sum of \$100,000.00 as a guarantee for the completion of any building started under the Title VI application, together with the said sum pledged under the agreement;" on the strength of the aforesaid letter of June 21, 1941, to the Federal Housing Administration, the Federal Housing Administration on that date approved the use of its commitments to insure certain loans by the Long Beach Federal Savings and Loan Association to the said C. J. Jones; the Association did not on June 21, 1941, have \$100,000 or any other sum in cash pledged by the said C. J. Jones to guarantee completion of the construction project; affiant is informed that in the course of the said examination, which was commenced May 18, 1946, there was found in the Association's files a check, dated June 23, 1941, drawn on the First and Pine Avenue Branch of [14238] the Bank of America payable to "Long Beach Federal Bld. & Loan [sic] in the amount of \$100,000 signed by the said C. J. Jones; the said check had not been endorsed or presented for payment; affiant is informed that the said C. J. Jones did not at any time in the month of June, 1941, have \$100,000 in the First and Pine Avenue Branch of the Bank of America, but that the highest balance that C. J. Jones had in said branch of said bank in the month of June, 1941, was \$172.80.

/s/ JOHN M. WYMAN.

Subscribed and sworn to before me this nineteenth day of April, 1949.

[Seal] /s/ PAUL PFEIFFER, JR.,
 Notary Public.

My commission expires Oct. 15, 1952. [14239]

Copy of Affidavit of John M. Wyman received March 20, 1950.

 /s/ W. I. GILBERT, JR.,
 Attorney for First Federal of
 Wilmington.

O'MELVENY & MYER,
Plaintiffs in F.H.L.B., L.A.
vs. F.H.L.B., S.F.

 /s/ CHARLES K. CHAPMAN,
 Attorney for Long Beach
 Federal.

WESTOVER & SMITH,
By /s/ WYCKOFF WESTOVER,
 Attorney for Plaintiff in
 5421 P.H.

BISHOP & HOFFMAN,
VERNE DUSENBERY,
PHILIP ANGELL,

By /s/ IRVING G. BISHOP.

[Endorsed]: Filed March 30, 1950. [14240]

[Title of District Court and Cause.]

AFFIDAVIT OF IRVING BOGARDUS FILED
ON BEHALF OF DEFENDANT, CROSS-
DEFENDANT AND THIRD PARTY DE-
FENDANT, FEDERAL HOME LOAN
BANK OF SAN FRANCISCO, IN OPPOSI-
TION TO MOTIONS OF PLAINTIFFS IN
ACTION NO. 5678 FOR ORDER DIRECT-
ING PAYMENT OF ATTORNEYS' FEES
ON ACCOUNT AND FOR ORDER DI-
RECTING REPAYMENT OF MONEYS
ADVANCED BY SHAREHOLDERS PRO-
TECTIVE COMMITTEE AND MOTION
OF FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION OF WILMINGTON,
ET AL., FOR ATTORNEYS' FEES ON
ACCOUNT AND COSTS [14241]

State of California,
City and County of San Francisco—ss.

Irving Bogardus, being first duly sworn, deposes and says:

That since the 29th day of March, 1946, your affiant has been and now is a duly elected, qualified and acting Vice President of the Federal Home Loan Bank of San Francisco, one of the defendants, cross-defendants and third party defendants in the above-entitled action; that said affiant was the duly appointed Acting President of said Federal Home Loan Bank of San Francisco from approximately the month of August, 1949, to and including the

9th day of March, 1950; that said affiant makes this affidavit for and on behalf of said Federal Home Loan Bank of San Francisco in opposition to the motion and petition of plaintiff First Federal Savings and Loan Association of Wilmington for allowance of attorneys' fees and costs in the above-entitled actions, and the petition of plaintiffs in action No. 5678 for order directing payment of attorneys' fees on account and for order directing repayment of moneys advanced by Shareholders Protective Committee. Affiant is informed and believes and upon such information and belief states that all of the facts set forth in all affidavits filed by or on behalf of all defendants, cross-defendants and third party defendants in the above-entitled actions, and each one thereof, including all affidavits filed by or on behalf of the United States of America, Home Loan Bank Board, A. V. Ammann, John H. Fahey, William K. Divers, O. K. LaRoque and J. Alston Adams, in opposition to the motion and petition of plaintiffs in action No. 5678 for order directing payment of attorneys' [14242] fees on account and for an order directing repayment of moneys advanced by Shareholders Protective Committee, and motion and petition of plaintiff First Federal Savings and Loan Association of Wilmington for allowance of attorneys' fees and costs, are true, and basing his statement herein upon such information and belief states that all of the facts set forth in said affidavits are true and correct and by this reference adopts said statements with like

force and effect as if the same were herein set forth in full.

Affiant further states that he has read the affidavits of J. Howard Edgerton, Tracy Skelton and T. A. Gregory in support of motions of plaintiffs in action No. 5678 for order directing payment of attorneys' fees on account and for order directing repayment of moneys advanced by Shareholders Protective Committee and motion and petition of plaintiff First Federal Savings and Loan Association of Wilmington for allowance of attorneys' fees and costs. Affiant states that at no time has any Federal Savings and Loan Association, or any other Savings and Loan Association or any person, firm or corporation doing business with said Federal Home Loan Bank of San Francisco, been compelled or required to do business with said Federal Home Loan Bank of San Francisco, or purchase stock of said Federal Home Loan Bank of San Francisco by reason of business or economic compulsion or duress or any compulsion or duress of any kind or nature; that all persons, firms or corporations doing business of any kind or nature with said Federal Home Loan Bank of San Francisco did so as its or their own free and voluntary act and without any coercion, compulsion or duress of any kind or character. [14243]

Answering the statements of said J. Howard Edgerton commencing on page 8, line 12, and ending on page 10, line 10 of said affidavit of said J. Howard Edgerton, affiant refers to and incorporates

herein by this reference each and all of the allegations of Amended Return of Federal Home Loan Bank of San Francisco, William A. Davis and Gerrit Vander Ende to Order to Show Cause Returnable August 16, 1948, and Answer and Objections to Petition and Motion Upon Which Order to Show Cause Is Based on file in the above-entitled consolidated actions. Affiant further states that said affiant is informed and believes, and upon such information and belief states that at no time whatsoever has John H. Fahey as Federal Home Loan Bank Commissioner or otherwise, or any officer, employee or representative of said John H. Fahey as such Federal Home Loan Bank Commissioner or otherwise, or any member, officer or employee of said Home Loan Bank Board, or any person representing said Home Loan Bank Board, stated to anyone whomsoever that any Federal or other savings and loan association, or anyone whomsoever, contributing money toward a fund to oppose by litigation or otherwise the alleged seizure of the Federal Home Loan Bank of Los Angeles, would be subject to disciplinary or any action by said John H. Fahey as Federal Home Loan Bank Commissioner or otherwise, or said Home Loan Bank Board, or anyone else, or that any savings and loan association so contributing would be subject to seizure or any other interference whatsoever with its normal course of business, but said affiant is informed and believes and upon such information and belief states that at no time has said John H. Fahey as Federal Home Loan Bank Commissioner or otherwise or [14244] any officer, employee or representative of said John

H. Fahey as such Federal Home Loan Bank Commissioner or otherwise, or any member, officer or employee of said Home Loan Bank Board, or any person representing said Home Loan Bank Board, ever stated to anyone whomsoever that any action of any kind or character would be taken against any savings and loan association or any officer, employee or representative thereof by reason of the fact that such savings and loan association or its officers or its employees or representatives employed attorneys in the above-entitled litigation or any other litigation or contributed money for any of said purposes. Said affiant further states that said affiant is informed and believes and upon such information and belief states that neither said John H. Fahey as Federal Home Loan Bank Commissioner or otherwise or the members of said Home Loan Bank Board or anyone acting for and on behalf of either thereof, questioned or challenged the right of any savings and loan association whatsoever or its officers or employees or representatives to employ attorneys for the purpose of challenging or questioning any act of the Federal Home Loan Bank Administration by litigation or otherwise.

Affiant refers to his affidavit filed herein on or about the 25th day of February, 1950, in opposition to motions of First Federal Savings and Loan Association of Wilmington, et al., for attorneys' fees on account and costs, wherein said affiant states, at page 5 thereof, lines 15 to 24, as follows:

“That said Federal Home Loan Bank of San Francisco has mailed dividend checks to said

First Federal [14245] Savings and Loan Association of Bellflower commencing on July 9, 1946, to and including the 11th day of January, 1950, in a total sum of \$2,057.00 and to said Long Beach Federal Savings and Loan Association in the total sum of \$9,126.00. That said First Federal Savings and Loan Association of Bellflower and said Long Beach Federal Savings and Loan Association, and each one thereof, have retained said dividend checks but have not cashed the same as of the date hereof."

That said affiant in said statement inadvertently showed dividends paid to said Long Beach Federal Savings and Loan Association to and including the 11th day of January, 1950. Affiant wishes to correct said statement to read as follows:

"That said Federal Home Loan Bank of San Francisco has mailed dividend checks to said First Federal Savings and Loan Association of Bellflower commencing on July 9, 1946, to and including the 11th day of January, 1950, in a total sum of \$2,057.00, and to said Long Beach Federal Savings and Loan Association commencing on July 9, 1946, to and including the 7th day of July, 1949, in a total sum of \$9,126.00. That said First Federal Savings and Loan Association of Bellflower and said Long Beach Federal Savings and Loan Association, and each one thereof, have retained said dividend checks but have not cashed the same as of the date hereof."

Affiant further states that Federal Home Loan Bank of San Francisco declared a dividend payable on January 11, 1950, [14246] and that no dividend check was sent to Long Beach Federal Savings and Loan Association, but that said dividend of January 11, 1950, was applied in accordance with the letter of Federal Home Loan Bank of San Francisco to Long Beach Federal Savings and Loan Association dated December 30, 1949, a copy of which said letter is attached as Exhibit "A" to the Affidavit of T. A. Gregory, President of Long Beach Federal Savings and Loan Association, dated the 15th day of March, 1950, on file in the above-entitled consolidated actions.

Affiant further states that said Federal Home Loan Bank of San Francisco has paid dividends to its members who have not exchanged their stock in the former Federal Home Loan Bank of Los Angeles for stock of said Federal Home Loan Bank of San Francisco, but said dividends have been paid to such members as members of said Federal Home Loan Bank of San Francisco and not otherwise.

Further affiant saith not.

/s/ IRVING BOGARDUS.

Subscribed and sworn to before me this 17th day of March, 1950.

[Seal] /s/ CLARA H. COOPER,
Notary Public in and for the City and County of
San Francisco, State of California. My com-
mission expires January 10, 1953. [14247]

I Hereby Acknowledge Receipt of copy of the within Affidavit of Irving Bogardus this 20th day of March, 1950.

/s/ W. J. GILBERT, JR.,
For First Fed. of
Wilmington.

WESTOVER & SMITH,
By /s/ WYCKOFF WESTOVER,
For Plaintiffs in 5421 P. H.

O'MELVENY & MYERS,
/s/ BENNETT W. PRIEST,
For Plaintiffs in 5421 P. H.

[Endorsed]: Filed March 20, 1950. [14248]

Before the Department of Investment, Division of
Corporations of the State of California

File No. 80282LA

Receipt No. LA 69192

I, the undersigned, as Commissioner of Corporations of said State, do hereby license Mrs. Flora E. Mallonee, Winnie Bucklin, and Mabel E. Fergus, Stockholders' Protective Committee for shares of Long Beach Federal Savings and Loan Association to engage in business as contemplated by Chapter 385, Statutes 1949, and the rules and regulations

of the Commissioner established pursuant thereto, and as such is duly authorized so to act

In the State of California

and generally to carry on said business in said State, under the terms and conditions set forth in said Act and rules and regulations, for and during the period ending the 31st day of December next after date of this certificate, unless the license shall have been sooner suspended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this first day of January, 1950.

[Seal]

EDWIN M. DAUGHERTY,
Commssioner of Corporations.

By /s/ RONALD H. LOENHOLM,
Deputy Commissioner.

[Endorsed]: Filed March 27, 1950. [19096]

[Title of District Court and Cause.]

FIFTH SUPPLEMENTAL CROSS-CLAIM IN
INTERPLEADER OF TITLE SERVICE
COMPANY

Comes now the Defendant and Cross-Claimant, Title Service Company, leave of Court so to do having heretofore been had and obtained, and files this its Fifth Supplemental Cross-Claim in [19097] Interpleader against the Defendant Lillian A. Coggs-

well, sued herein as Jane Doe One, and all other Defendants and Cross-Defendants and in support thereof alleges:

I.

Cross-Claimant realleges and incorporates herein by reference its following prior pleadings;

(a) Its Original Answer and Cross-Claim in Interpleader, filed with this Honorable Court on June 4, 1946, and

(b) Its Supplemental Cross-Claim in Interpleader, filed with this Honorable Court on October 7, 1946, and

(c) Its Second Supplemental Cross-Claim in Interpleader, filed with this Honorable Court on January 22, 1947, and

(d) Its Third Supplemental Cross-Claim in Interpleader, filed with this Honorable Court on August 29, 1947, and

(e) Its Fourth Supplemental Cross-Claim in Interpleader, filed with this Honorable Court on October 28, 1947,

with the same force and effect as though said prior pleadings were again herein set forth in full.

II.

That the Defendant and Cross-Claimant filed with this Honorable Court on June 4th, 1946, its said First and Original Cross-Claim in Interpleader, depositing thereunder into the registry of this Court, 174 Trust Deeds with approximate face value of \$800,000.00.

That thereafter, after filing with this Honorable Court on August 9th, 1946, Notice to File Supplemental Cross-Claim in Interpleader the said Defendant and Cross-Claimant did file on October 7, 1946, its said Supplemental Cross-Claim in Interpleader involving 25 notes and Deeds of Trust in the amount of \$61,632.90. Thereafter, there issued from this Honorable Court the Minute Order of October 7, 1946, whereby it was ordered that motion of the Cross-Claimant, Title Service Company for permission to file Supplemental Cross-Claim in Interpleader, is granted and any further Cross-Claims may be filed without notice. [19098]

That thereafter on January 22, 1947, the Cross-Claimant, Title Service Company filed with this Honorable Court its Second Supplemental Cross-Claim in Interpleader involving 1 note and Trust Deed in the amount of \$1,750.00.

That thereafter on August 29, 1947, the said Cross-Claimant filed with this Honorable Court its said Third Supplemental Cross-Claim in Interpleader involving 37 Promissory Notes and 36 Deeds of Trust in the amount of \$101,931.54.

That thereafter on October 2, 1947, the said Cross-Claimant filed with this Honorable Court its Fourth Supplemental Cross-Claim in Interpleader involving 1 Note and Deed of Trust in the amount of \$2,300.00.

That subsequent to said various interpleaders, the borrowers on many of said deeds of trust intervened as parties in this action and by process of this Honorable Court, obtained reconveyances legally effec-

tive to enable such borrowers to clear the titles to their property and homes from the liens and encumbrances of said deeds of trust.

III.

That by judgment of this Court, dated January 23, 1948, said Association was removed from the possession and control of cross-defendant, A. V. Ammann, and returned to the operation and management of its founding officers and directors.

That thereafter by appropriate mass interpleader proceedings, there was deposited into the registry of this Court, approximately \$5,300,000.00 in face value, of United States Government Bonds. That there was at said time, the sum of approximately \$1,500,000.00 in cash already on deposit in the Registry of the Court, which said bonds and cash, by appropriate orders of this Court, became substituted for, and in lieu of the obligations and securities, if any, of approximately \$8,500,000.00 in face value of several thousands of notes and deeds of trust, owned by, and the property of, [19099] said Long Beach Federal Savings and Loan Association claimed by Cross-Defendants San Francisco Bank, et al., to be pledged by Defendant Ammann to said bank in connection with a claimed debt of approximately \$6,300,000.00.

IV.

That the note and deed of trust hereinafter described, was not mentioned or described in said order of this Court, re said mass interpleader returning said approximately \$8,500,000.00 of face

value of notes and deeds of trust to said Association. That there is doubt as to the effect of the omnibus clause of said Order of Court, upon the note and deed of trust hereinafter referred to, because apparently said note and deed of trust was either, (a) paid in full and discharged as of September 27, 1946, many months prior to the said Order of this Court returning said notes and deeds of trust, or (b) said note had been sold, assigned, and transferred by said Cross-Defendant Ammann to Cross-Defendant Lillian A. Coggsell, sometime in October, 1946, likewise many months prior in time to the said Order of this Court re mass interpleader on said \$8,500,000.00 of face value of Association deeds of trust.

V.

That both said payment in full and discharge and/or said sale, assignment and transfer of said note and deed of trust, if either or both of said matters ever took place, occurred subsequent to, and after the commencement of this action on May 27, 1946, and likewise after the recordation of the notice of Lis Pendens in the office of the County Recorder in Los Angeles, California, wherein said real property is situated. That said Lis Pendens described and referred to said deed of trust and the real property therein purportedly conveyed and was recorded as aforesaid in June, 1946.

VI.

That on or about the 7th day of December, 1949, one Frank [19100] Makepeace, acting as attorney

for Lillian A. Coggs well, delivered to Cross-Claimant in Interpleader, Title Service Company, the following documents:

(1) A Note dated October 1, 1943, in the face amount of \$1,200.00 bearing interest from October 1, 1943 at the rate of 6% per annum, principal and interest payable in monthly installments of \$25.00 on the 1st day of each month, executed by Frank E. Russell, as maker and trustor and assumed by L. E. McCleary, in favor of the Long Beach Federal Savings and Loan Association, a Federal Corporation. Said note has an apparent unpaid balance of \$631.78 as of April 4, 1946.

(2) A Deed of Trust securing the above-said note executed by one Frank E. Russell as trustor, to Title Service Company, Trustee, and Long Beach Federal Savings and Loan Association, a corporation, as beneficiary. That said deed of trust conveyed the legal title and ownership of the hereinafter described real property to the said trustee therein named, Title Service Company, Cross-Claimant herein, upon the terms and conditions contained in said deed of trust. The property so described is as follows:

Lots 45 and 46 of Signal Park Tract, No. 2, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 10, Page 109 of Maps, in the office of the County Recorder of said County.

Said property is situated in the County of Los Angeles, State of California. Said deed of trust

was recorded October 11, 1943, in Book 20322, Page 207 of Official Records, County of Los Angeles, California.

(3) That said note bears the perforation through the body thereof, "Paid" on two separate places, under one of which are also the figures 9-27-46, notwithstanding which there was also delivered to the said Cross-Claimant in Interpleader, Title Service Company, a purported assignment of said deed of trust. [19101]

That said instrument purported to be an assignment of the aforementioned and described deed of trust, and that said assignment was dated October 11, 1946, and purportedly executed by Cross-Defendant A. V. Ammann, as purported conservator of said Association.

That said instrument of Assignment was apparently acknowledged by said Ammann upon the date of its execution, October 11, 1946.

That the said Assignment was recorded on October 15, 1946, in Book 23641 at Page 121, of Official Records of the County Recorder of Los Angeles County, State of California, and was in favor of, and named as, assignee, said Cross-Defendant Lillian A. Coggsell.

VII.

That by the said Order of this Honorable Court, dated January 23, 1948, removing said Cross-Defendant Ammann as purported conservator of said Association, said Cross-Defendant Ammann was therein ordered to render to, and file with, said

Court, a "full and complete accounting," of all of the assets and liabilities of said Association and its transactions and dealings therein and therewith.

That said Association has informed this Cross-Claimant that said note and deed of trust, and the purported payment in full and discharge thereof and/or sale and assignment thereof, are neither reported in said purported accounting, nor described therein, nor otherwise identified or mentioned therein, except that, a loan number apparently referring to the said note and deed of trust is shown as an asset of said Association, at the time of the seizure thereof by cross-defendant Ammann, and is not carried as an asset of said Association at the time of the return of the various assets of said Association by the said Ammann to said Association. [19102]

VIII.

That the said Lillian A. Coggsell, by and through her attorney, claims to be the owner of, and the holder of, said note and deed of trust, and demands and insists that this Cross-Claimant, as trustee thereunder, must foreclose the same at her insistence and direction. That said Association, the named beneficiary under said trust deed and payee under said note, claims that the transactions of the said Ammann, with its assets and properties, are invalid, illegal and void, and the subject of accounting and other litigation now pending before this Court, and declines to acquiesce in, ratify or confirm the said purported assignment or sale of the

said note and deed of trust, by the said purported conservator Ammann, Cross-Defendant.

That this Cross-Claimant is unable to, at present, ascertain the attitude or position of said Ammann in connection with the particular transaction. That the said Defendant Ammann, in other and previous circumstances, similar but not identical, has asserted and claimed the power and right to sell, assign, transfer and deal with said Association's notes, deeds of trust and other assets.

XI.

That in June, 1946, when first named as a defendant in the above-entitled proceedings, and faced with the multiple, conflicting and contradictory claims and demands of various parties claimant to title and ownership, of notes and deeds of trust in which this Cross-Claimant was named as trustee, aggregating in face value approximately \$12,000,000.00, this Cross-Claimant interplead each and all of said titles to the real property in said notes and deeds of trust, encumbered by, described in, and held by this Cross-Claimant as trustee, into the Registry and custody of this Honorable Court. That your Cross-Claimant as such trustee is unwilling to reconvey, foreclose or otherwise act as such trustee without [19103] the approval, direction and instruction of this Court by appropriate order and process of this Court.

X.

That your Cross-Claimant as such trustee is particularly hesitant even without this litigation and

said interpleader of titles, to act without instructions and direction from this Court in foreclosing a note and deed of trust marked "Paid" and perforated with such "Paid" marking, with the date of such purported payment. That there should be inquiry by this Court, by appropriate process into the true nature of the purported transactions whereby said Cross-Defendant Lillian A. Coggsell now claims to be the owner and holder of and entitled to foreclose the said note and deed of trust purportedly paid on September 27, 1946, and purportedly sold, assigned and transferred October 11, 1946, notwithstanding such purported payment by said Cross-Defendant Coggsell some 14 days prior thereto.

XI.

That said Lillian A. Coggsell, through her attorney, claims and represents that some of the installment payments due upon said note and deed of trust, are, or may be, barred by the statute of limitations, or otherwise outlawed by lapse of time, for the enforcement thereof. That this Cross-Claimant suggests that by appropriate process and orders of this Court, relief or action might be taken or indicated, permitting the enforcement of said deed of trust, without prejudice to the rights of the various parties including Plaintiffs, Shareholder Members Protective Committee; Defendants and Cross-Defendants, Long Beach Federal Savings and Loan Association; Home Indemnity Company, the bonding Company of said Ammann's bond; Defendants

and Cross-Defendants, Ammann, Lillian A. Coggs-well, et al.

Wherefore, this Cross-Claimant, Title Service Company prays that the Court make its order against said Cross-Defendants and each [19104] and all of them, jointly and severally, as follows:

1. Allowing this Cross-Claimant to deposit with the Clerk of the Registry of this Court the following:

A. The hereinabove described promissory note and assumption agreement.

B. The hereinabove described trust deed.

C. The hereinabove assignment of trust deed.

D. The request for full Reconveyance by the defendant Long Beach Federal Savings and Loan Association by A. V. Ammann, Conservator.

2. That all conflicting claimants be required to interplead and litigate among themselves, and with this Cross-Claimant their various claims, ownership, and titles to the said note, deed of trust, assignment, and the real property therein described and conveyed.

3. That this Defendant and Cross-Claimant be instructed and directed by this Honorable Court as to its actions and duties as said trustee, under the circumstances disclosed by hearings of these matters before said Honorable Court and upon fulfillment of, and compliance with such orders and disclosures of said court be released and discharged from any

and all liabilities as such trustee to any and all of the parties herein upon the said above-described deed of trust, and

4. That the various conflicting claimants be enjoined and restrained from other litigation or harassment of this Cross-Claimant; and

5. That this Cross-Claimant herein recover its costs and expenses and a further reasonable sum for attorney's fees incurred, and said attorney's costs and expenses, and that said sum so allowed, be ordered paid by Defendants and Cross-Defendants, Fahey and Ammann, et al., or from the funds held in the Registry of this Court in interpleader; and [19105]

6. For such other and further order as may be meet and proper in the premises.

/s/ LYMAN B. SUTTER,
Attorney for Defendant
Title Service Company.

State of California,
County of Los Angeles—ss.

S. I. Bacon, being first duly sworn, deposes and says:

That he is the Vice-President of the Title Service Company, the Defendant who makes the foregoing Fifth Supplemental Cross-Claim in Interpleader of Title Service Company, and that he has read the same, and knows the contents thereof, and that the

same is true of his own knowledge, except as to matter therein stated upon information and belief, and as to such matters he believes them to be true.

/s/ S. I. BACON.

Subscribed and sworn to before me this 25th day of March, 1950.

[Seal] /s/ BERTHA E. CUMPTON,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed March 27, 1950. [19106]

[Title of District Court and Cause.]

MOTION FOR ORDER OF COURT REQUIR-
ING DEFENDANTS AND CROSS-
DEFENDANTS HOME LOAN BANK
BOARD, ET AL., AND THEIR DEPUTIES,
AGENTS, EMPLOYEES, ETC., TO AP-
PEAR AND TESTIFY

Come Now,

1. The Plaintiffs, Mallonee, Bucklin and Fergus, the Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association;

2. Long Beach Federal Savings and Loan Association, cross-claimants and third-party plaintiffs;

3. Title Service Company, a corporation, defendant and cross-claimant in interpleader;

4. Robert H. Wallis, defendant and cross-claimant in interpleader; and

5. George Turner, defendant and cross-claimant in interpleader;

and make this motion that this United States District Court make its Order or Orders, requiring and ordering the defendants, and cross-defendants, and third-party defendants:

(a) John H. Fahey, individually and as former Federal Home Loan Bank Commissioner, and in all other official capacities;

(b) A. V. Ammann, as former purported conservator of Long Beach Federal Savings and Loan Association, individually, as Assistant Chief Supervisor, and in all other official, representative, or other capacities;

(c) Home Loan Bank Board;

(d) Federal Savings and Loan Insurance Corporation;

(e) William K. Divers, Chairman of Home Loan Bank Board and trustee of Federal Savings and Loan Insurance Corporation, individually and in all other official, representative or other [19122] capacities;

(f) O. K. LaRoque, Member of Home Loan Bank Board and trustee of Federal Savings and Loan Insurance Corporation, individually and in all other official, representative, or other capacities;

(g) J. Alston Adams, Member of Home Loan Bank Board and trustee of Federal Savings and Loan Insurance Corporation, individually, and in

all other official, representative, or other capacities; and said above named defendants' servants, agents, deputies, employees, assistants, subordinates, and others subject to their direction and control.

(h) John M. Wyman, Chief Supervisor Home Loan Bank Board, and Federal Savings and Loan Insurance Corporation;

(i) R. J. Strecker, Assistant District Examiner, in charge of examination of Long Beach Federal Savings and Loan Association, and/or District Examiner for Third Federal Home Loan Bank District, and

(j) Irving Bogardus, defendant and cross-defendant, acting President of Federal Home Loan Bank of San Francisco; and all others who heretofore made and filed affidavits with this Honorable Court.

To Each and All Appear before this Court, at a time and place to be designated by this Honorable Court and to attend sessions thereof, and to then and there give evidence and testimony and be subject to direct and cross-examination; and to, at said time and place, bring with them, and each of them, and produce at the said time and place aforesaid, such documentary or written evidence, as this Honorable Court may direct.

Or in the Alternative

That this Honorable Court make other appropriate Orders ordering and directing, (1) the production of such testimony and evidence, at times and places, in manners and by methods, all [19123]

to be determined by said Court, and (2) inspection and production of the balance of the written or documentary evidence, a portion of which has been offered as exhibits attached to such affidavits.

That such orders provide for cross-examination of defendants and their subordinates so as to compel the disclosure of all of the documents and writings in their possession and the eliciting of all matters within their knowledge.

Said Motion will be based upon the following grounds:

1. That said defendants and cross-defendants, (a) to (j), have filed with this Honorable Court for consideration, and have urged that said Court make Orders and Judgments thereon, approximately 110 or more pages of affidavits, exhibits attached thereto, and other evidenciary matter, and

2. That such purported evidence, etc., is in the form of hearsay, opinion, legal conclusions, surmise, guess, and inference, each and all of which are not based upon facts, or actualities. That to demonstrate the falsity, or to verify the accuracy, thereof requires the test of cross-examination of such witnesses personally present in Court; and

3. That by the filing of such affidavits, containing the material therein presented to this Court, defendants Home Loan Bank Board, et al., tendered to the Court for decision, the issues raised by the pleadings and other filings, of many of the parties to this litigation. That the decision of such issues

thus tendered, requires a complete hearing on oral testimony and the introduction of contrary testimony, documents and other evidence, on the part of plaintiffs, cross-claimants and other parties to this action; and

4. That the said affidavits and exhibits therein contained, were filed with this Court, and served upon opposing parties, pursuant to a special Order of this Court, obtained Ex Parte on the 15th of March, 1950, extending the time for filing of supplementary and counter-affidavits, in response to affidavits previously filed [19124] by the parties moving for allowances of attorneys' fees for counsel for plaintiff Federal Home Loan Bank of Los Angeles, et al., and First Federal Savings and Loan Association of Wilmington. That the time of hearing of the motions for the said attorneys' fees, was prescribed in an Order of Court dated January 31st, 1950, setting the said motions for hearing on February 27th, 1950. That previous objections to said motions have been filed by said defendants Home Loan Bank Board, et al., on or about the 23rd day of September, 1949. That subsequent objection by said defendants to said motions for attorneys' fees was filed and served on or about February 23rd, 1949, by said defendants.

That during the course of the hearings on said motions for attorneys' fees on February 27th, and February 28th, 1950, the Court continued the further hearing thereof, until the 21st day of March, 1950, and set the 15th day of March, 1950,

as the date for the filing of all further affidavits for all parties.

That on the said 15th day of March, 1950, by Ex Parte application, defendant Federal Home Loan Bank of San Francisco, upon the affidavit of one of its counsel, Irving G. Bishop, obtained leave of Court for filing of counter-affidavits, on the 20th day of March, 1950.

That the defendants Home Loan Bank Board, approximately 40 hours before the date for further hearings of said motions for attorneys' fees, during the course of a hearing before the Special Master of this Court, served upon opposing counsel, approximately 110 pages of affidavits and exhibits.

That of the Said 110 Pages, Approximately 11 Pages of Affidavits Are Dated Subsequent to the Said 15th Day of March, 1950, and Approximately 87 Pages of Affidavits and Exhibits Are Dated, at the Latest, 11 Months Prior to Said Date, and Some of Said Exhibits Are Dated as Early as 1936. That 51 Pages of Such Affidavits Are Dated in April of 1949, 11 Months Prior to the Date [19125] of Filing Thereof.

That said material could have been filed and served by said defendants and cross-defendants within the Court's previous requirements as to filing of objections and counter-affidavits; and

5. That most of the allegations set forth in said affidavits and exhibits are extraneous to the issues of allowances of attorneys' fees to the moving parties Federal Home Loan Bank of Los Angeles, et al.,

and First Federal Savings and Loan Association of Wilmington, et al., but if in evidenciary form, and if truthful, would, or might in part, be pertinent to the decision of issues concerning the Long Beach Association, its seizure and attempted confiscation, and its prior restoration by defendants Home Loan Bank Board, and Order and Judgment of this Court; and

6. That the exhibits attached to said affidavits constitute but a small portion of the volume of such documentary evidence from which such exhibits were extracted. That the balance thereof, or all, or part of, said balance, contain evidence contradictory to, and conflicting with, the matters contained in said exhibits to said affidavits. That such other documentary evidence is being withheld and suppressed by said defendants, and inspection or examination thereof refused and prevented; and

7. That the testimony attempted to be given by affidavit is within the power and control of said defendants Home Loan Bank Board, et al., to produce by personal attendance of said affiants as witnesses, before this Honorable Court, and the filing of originals, photostats, or authenticated copies, of such exhibits, instead of the extracts thereof attached to said affidavits.

8. That the said affidavits are either those of individual defendants and cross-defendants themselves, or of their deputies, subordinates, employees, and agents. That Each and All of Said Individual

Defendants and Their Said Subordinates, Agents and Deputies, With the Exception of Defendant Fahey, Have Been and [19126] Will Be on Many Occasions, Within the District of This United States District Court, and Within the Boundaries of the State of California.

That the affiant Wyman has been in the County of Los Angeles, State of California, on several occasions, within the year 1949.

That the affiant Strecker was in the premises of the Long Beach Federal Savings and Loan Association (in Los Angeles County) for extended periods of many months.

That the defendant Ammann, for twenty months, was within the County of Los Angeles, State of California, in possession of the said Long Beach Federal Savings and Loan Association, after his seizure thereof.

That each and all of said affiants, (with the exception of defendant Fahey) are salaried officers or employees of the various defendants, and have their traveling and living expenses paid from the budgets and resources of said other defendants.

That the said Federal Savings and Loan Insurance Corporation is a multi-million dollar corporation, with ample assets, income, and budget, to finance the personal production of all necessary witnesses before this Honorable Court, to give the testimony sought to be presented to this Court by such affidavits; and

9. That this motion is based upon all of the pleadings, records, papers, files and documents, in

the above-entitled actions, and upon the Notice of Motion, Affidavits, and Memorandums of Points and Authorities filed herewith.

Wherefore, moving parties pray that this Honorable Court make its Order or Orders, as follows:

1. Requiring and ordering the defendants and cross-defendants, and third-party [19127] defendants:

(a) John H. Fahey, individually and as former Federal Home Loan Bank Commissioner, and in all other official capacities;

(b) A. V. Ammann, as former purported conservator of Long Beach Federal Savings and Loan Association, individually and as Assistant Chief Supervisor, and in all other official, representative, or other capacities;

(c) Home Loan Bank Board;

(d) Federal Savings and Loan Insurance Corporation;

(e) William K. Divers, Chairman of Home Loan Bank Board and trustee of Federal Savings and Loan Insurance Corporation, individually and in all other official, representative or other capacities;

(f) O. K. LaRoque, Member of Home Loan Bank Board and trustee of Federal Savings and Loan Insurance Corporation, individually and in all other official, representative, or other capacities;

(g) J. Alson Adams, Member of Home Loan Bank Board, and trustee of Federal Savings and Loan Insurance Corporation, individually, and in

all other official, representative, or other capacities; and said above named defendants' servants, agents, deputies, employees, assistants, subordinates, and others subject to their direction and control.

(h) John M. Wyman, Chief Supervisor, Home Loan Bank Board, and Federal Savings and Loan Insurance Corporation;

(i) R. J. Strecker, Assistant District Examiner, in charge of examination of Long Beach Federal Savings and Loan Association, and/or District Examiner for Third Federal Home Loan Bank District; and

(j) Irving Bogardus, defendant and cross-defendant, acting President of the Federal Home Loan Bank of San Francisco; and all others who heretofore have made and filed affidavits [19128] with this Honorable Court,

To Themselves Appear, and/or to cause their said servants, agents, deputies, employees, assistants, subordinates, and others subject to their direction and control to appear, at a time and place to be designated by this Honorable Court before this Court, and to attend sessions thereof, and to then and there give evidence and testimony, and be subject to direct and cross-examination; and to, at said time and place, bring with them, and each of them, and produce at the said time and place aforesaid, such documentary or written evidence, as this Honorable Court may direct.

Or in the Alternative

(2) That this Honorable Court make other ap-

propriate Orders or Judgments, authorizing and directing the production of such testimony and evidence, at times and places, and in manners and by methods to be fixed by this Court, to enable appropriate and proper cross-examination of defendants and their subordinates, whose evidence has been offered by affidavit, and inspection and production of the balance and remainder of the written or documentary evidence, a portion of which has been offered as exhibits attached to such affidavits; and

(3) For such other and further relief as the Court deems meet and proper in the premises.

Dated this 27th day of March, 1950.

WESTOVER & SMITH,

By /s/ WYCKOFF WESTOVER,
Attorneys for Plaintiffs, Mallonee, Bucklin, and
Fergus, of the Shareholder Members Protective
Committee of the Long Beach Federal Savings
and Loan Association.

CHARLES K. CHAPMAN,

/s/ CHARLES K. CHAPMAN,
Attorney for Third-Party Plaintiff and Cross-
Claimant, Long Beach Federal Savings and
Loan Association.

LYMAN B. SUTTER,

/s/ LYMAN B. SUTTER,
Attorney for Defendant and Cross-Claimant in In-
terpleader, Title Service Company.

RAYMOND TREMAINE,

/s/ RAYMOND TREMAINE,

Attorney for Defendant and Cross-Claimant in Interpleader, Robert H. Wallis.

F. HENRY NeCASEK,

/s/ F. HENRY NeCASEK,

Attorney for Defendant and Cross-Claimant in Interpleader, George Turner. [19130]

[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES K. CHAPMAN

State of California,

County of Los Angeles—ss.

Charles K. Chapman, being first duly sworn, deposes and says:

That affiant is attorney for third-party plaintiff and cross-claimant Long Beach Federal Savings and Loan Association and has been such since shortly after the inception of this [19134] litigation in 1946. That among the approximately 100 pages of affidavits and exhibits filed March 20, 1950, by defendants Home Loan Bank Board, et al., are a 30 page affidavit by R. J. Strecker dated April 22, 1949; a 12 page affidavit of John M. Wyman dated April 19th, 1949; and various other exhibits and affidavits relating in whole, or in part, to alleged matters concerning the books, accounts, and records, of Long Beach Federal Savings and Loan Association, and that said defendants and cross-defendants

chose to impose upon the court and opposing counsel, and to file such 11 month old affidavits and many years old exhibits, upon the eve of the hearing. That such late filing by said defendants Home Loan Bank Board, et al., was an attempt to prevent the moving parties herein from producing appropriate contrary testimony and evidence;

That the matters stated in such affidavits are legal conclusions, hearsay, surmise and guess, and can be properly tested and disproved only by the cross-examination of the said affiants personally present in Court, before this Honorable Court, in Los Angeles County, California, by the use in such cross-examination of the said books, records, and accounts to which they refer in their said affidavits.

That the confronting of said affiants with the records from which they claim to draw the conclusions which they state under oath, will enable this Court to judge for itself from the said records and from the personal testimony of the said affiants, the truth or falsity of the conclusions, guesses and hearsay contained in said affidavits, and will in addition thereto, enable this Honorable Court to determine the truth or falsity of the grave charges involving dishonesty, (and if true, criminal liability) made in such affidavits against reputable citizens of Los Angeles County, California, whose only offense has been that of being a customer of the Long Beach Federal Savings and Loan [19135] Association, and thereby incurring the spite and hatred of those who seized and attempted to destroy said Association.

That counsel for such citizens of Los Angeles County, California, thus falsely accused of wrongdoing, should be enabled to cross-examine the Home Loan Bank Board's employees, who thus make such accusations that said affidavits are alleged to be based upon the books and records necessary to the daily conduct of the business of said Association, and which books, etc., can be conveniently produced before this Honorable Court within the same County and only a few miles distant from the business and premises of said Association.

That it is difficult if not impossible, to attempt to summarize such books and records in counter-affidavits, without the opportunity of cross-examination of the said Home Loan Bank Board subordinates and employees.

That all of the matters set forth in said affidavits concerning the seizure of said Long Beach Association and the purported reasons and grounds therefor, were known to the affiants making such affidavits, and to their superiors, defendants Home Loan Bank Board, et al., on or prior to January 17th, 1948, at the time of the adoption of Home Loan Bank Board Order No. 388, rescinding the appointment of defendant Ammann as conservator, and returning said Association to the officers and directors from whom it had been seized by the said Ammann, and who are the same officers and directors accused of the four to sixteen year old matters set forth in said affidavits.

That cross-examination of said defendants will

enable this Court to test the falsity or truthfulness of the matters contained in their said affidavits.

Wherefore, Affiant respectfully requests that this Honorable Court require said defendants and cross-defendants and their employees and subordinate affiants, to appear personally [19136] before this Court and to give, in the presence of the Court, and subject to cross-examination, the testimony they have sought to present by such affidavits.

/s/ CHARLES K. CHAPMAN.

Subscribed and sworn to before me this 27th day of March, 1950.

[Seal] /s/ MARGARET O. SHALLIS,
Notary Public in and for
Said County and State.

[Title of District Court and Cause.]

AFFIDAVIT OF WYCKOFF WESTOVER IN
RESPONSE TO THE DOCUMENTS FILED
MARCH 20, 1950, BY HOME LOAN BANK
BOARD, et al., AND FEDERAL HOME
LOAN BANK OF SAN FRANCISCO, et al.

State of California,
County of Los Angeles—ss.

Wyckoff Westover, being first duly sworn, deposes and says:

That he is a member of the firm of Westover & Smith, Counsel representing the plaintiffs, Mal-lonee, et al., the Shareholder Members Protective

Committee of the Long Beach Federal Savings and Loan Association.

That by order dated March 15, 1950, parties in the above-entitled [19138] matter were allowed until and including "March 20, 1950, within which to prepare, serve and file any counter affidavits in response to the affidavits of Tracy Skelton and J. Howard Edgerton, heretofore filed in the above-entitled matter * * *"

That on Monday afternoon, March 20, 1950, there was served upon affiant the following:

1. Response to the affidavit of J. Howard Edgerton and Tracy Skelton on behalf of the Home Loan Bank Board, William K. Divers, J. Alston Adams and O. K. LaRoque, members of the Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation, and attached thereto:

(a) Affidavit of John H. Fahey dated March 18, 1950, consisting of 5 pages, with exhibits 1 to 7, consisting of approximately 36 pages.

(b) Affidavit of John M. Wyman, dated March 17, 1950.

(c) Affidavit of William K. Divers, dated March 18, 1950.

(d) Affidavit of John H. Fahey, dated April 19, 1949, consisting of 8 pages.

(e) Affidavit of R. J. Strecker, dated April 22, 1949, consisting of 31 pages.

2. Affidavit of Irving Bogardus, filed on behalf of the Federal Home Loan Bank of San Francisco, dated March 17, 1950, consisting of 7 pages.

3. Affidavit of John M. Wyman, dated April 9, 1949, consisting of 12 pages.

That affiant has read said affidavits and responses and that said affidavits in the main are not responsive to the affidavits of J. Howard Edgerton and Tracy Skelton; that a large portion of said affidavits and responses are not within the [19139] purview of said courts order issued March 15, 1950, allowing the filing of "counter affidavits" up to and including March 20, 1950; that most of the allegations and statements in said affidavits are not material to the present pending motions of:

A. Federal Home Loan Bank of Los Angeles for:

(a) Order directing payment of attorneys' fees on account.

(b) Order directing repayment of cost moneys advanced.

B. First Federal Savings and Loan Association of Wilmington, for allowance on account of attorneys' fees in Class action.

That the affidavit of John H. Fahey, dated March 18, 1950, setting forth his alleged reasons for merging the Federal Home Loan Bank of Los Angeles into the uneconomically operated Federal Home Loan Bank of Portland which then had only one outstanding loan. And the reporting of hearsay versions of alleged conversations with various persons, government officials, and others, are not material to the present pending motions regarding attorneys' fees and costs;

That neither in the said affidavit of John H.

Fahey, dated March 18, 1950, nor in the documents attached thereto, is there any statements that said documents constitute all of the files, records, reports, correspondence and documents dealing with the subject matters and transactions, correspondence and conversations referred to in said affidavit of John H. Fahey, of March 18, 1950, and the documents attached thereto.

That the year old affidavit of John H. Fahey, dated April 19, 1949, is not a proper counter affidavit to the affidavits of Tracy Skelton and J. Howard Edgerton, dated and filed approximately 11 months later.

That said affidavit of John H. Fahey of April 19, 1949, reviewing the history of the growth of the Federal Home Loan Bank system, is not responsive to said affidavit of Tracy Skelton and J. Howard Edgerton, nor is it material to the pending motions for [19140] interim on account allowance of attorneys' fees and reimbursement of expenses.

That the year old affidavit of R. J. Strecker, dated April 22, 1949, allegedly "based on his examination of the Long Beach Federal Savings and Loan Association as of May 18, 1946, and of the records of said Association" and therein reviewing:

His qualifications,

Officers and directors,

Annual organizational meeting of directors,

Joint occupancy,

Loans secured by first deeds of trust,

Concentration,
J. D. Wilhoit loans,
J. D. Wilhoit and E. M. Frame,
J. D. Wilhoit as an individual,
C. S. Jones,
C. J. Jones,
Jones Brothers Lumber Co.,
Identity of borrowers,
C. S. Jones loans July 16, 1940, etc.,
C. J. Jones loans—1941,
Jackson Turner loans,
Loans to Jackson Turner as borrower,
Loans to various individuals on properties
 where Jackson Turner was the contractor,
Other loans granted by Association,
Moss and Co., 1939,
Paul Cawood, 1937,
Mason E. Knight, 1938,
Jack and Carolyn Stanaland,
Ducrete Co., 1941,
Sales of loans to individuals—March, [19141]
 1940, etc.,
Real estate sales—1938, etc.,
Inadequately explained and/or questioned ex-
 penses in general,
Disbursements to gasoline service stations,
 1943, etc.,
Disbursements involving Lorne D. Middough,
 1943, etc.,
Legal Fees—1938-May, 1946,
Other inadequately explained or questioned
 expenses,

Billboard advertising,
Travel and legal expenses incurred by T. A.
Gregory—1945-March, 1946,
Resolution Board of Directors, dated May 8,
1946,
Attendance,
Leasing of Rolston Hotel,
Lease of two alley stores to J. D. Wilhoit,
\$100,000.00 resolution,
Issuance of 21,000 shares accounts,
Appointment of conservator, May 20, 1946,

is not material to the pending motions of the Federal Home Loan Bank of Los Angeles and the First Federal Savings and Loan Association of Wilmington, for interim allowance on account of attorneys' fees and repayment of expenses.

That the year old affidavit of John M. Wyman, dated April 19, 1949, dealing with the examination of the Long Beach Federal Savings and Loan Association in July, 1945, and other matters regarding the Long Beach Federal Savings and Loan Association, allegedly reported by affiant Wyman on or about March 1, 1946, including matters from 1934 to 1946, none of which dealt with the Federal Home Loan Bank of Los Angeles, or the First Federal Savings and Loan Association of Wilmington, are not material to the pending motions of the Federal Home Loan Bank of Los Angeles and the First Federal Savings and Loan Association of Wilmington for an interim allowance on account of attorneys' fees and reimbursements [19142] for costs advanced.

That the said affidavits, including the affidavit of Irving Bogardus dated March 17, 1950, do contain a great many allegations and statements, conclusions and opinions, which are material to and have bearing upon the main issues in the principal litigation in chief; that your affiant is informed and believes and on such information and belief alleges that some of the statements and allegations in said affidavits are incorrect and that most of the material allegations and statements in said affidavits are contrary to and in conflict with allegations and statements in other affidavits and verified pleadings heretofore filed in this litigation;

That your affiant respectfully requests that all affidavits and verified pleadings heretofore filed in this litigation by or on behalf of the plaintiffs Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association and/or by the Long Beach Federal Savings and Loan Association, and/or by the Title Service Company, and/or by Robert H. Wallis, be hereby referred to, and deemed submitted in connection with the pending motions of the said Federal Home Loan Bank of Los Angeles, and the said First Federal Savings and Loan Association of Wilmington for interim allowance on account of attorneys' fees, and for reimbursement of costs, and be deemed and considered as denials of and in response to all of the material allegations, statements, conclusions and opinions set forth or referred to in the above-listed affidavits.

That in order to properly and adequately respond

to the numerous allegations, statements, opinions and conclusions set forth at length and in detail in the above listed affidavits and the documents attached thereto, it will be necessary that these plaintiffs be afforded opportunity to inspect all of the books, records and documents, any part of which is referred to in said [19143] affidavits or the documents attached thereto, and to cross-examine the makers of said affidavits of the defendants, and their agents, employees or servants, to wit:

Defendant William K. Divers, Chairman of the
Home Loan Bank Board,
John M. Wyman, Chief Supervisor,
Defendant A. V. Ammann,
R. J. Strecker, District Examiner,
Defendant John H. Fahey,
Defendant Irving Bogardus.

Wherefore, it is respectfully requested that this court make its order that the said defendants and their agents, servants and employees, and each of them, appear before this Honorable Court and bring with them all of the books, records, documents, files and complete correspondence to which reference is made in any of said affidavits or in any of the documents attached to said above listed affidavits;

That said Order further provide that parties to this litigation be afforded opportunity to examine such books, records, documents and correspondence and to cross-examine the makers of said affidavits and their agents, servants, and employees.

That this Honorable Court fix the time for such

inspection, and the cross-examination of such parties and their agents, employees and servants.

Dated at Los Angeles this 27th day of March, 1950.

WESTOVER & SMITH,

By /s/ WYCKOFF WESTOVER,

Attorney for Plaintiffs, Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association.

Subscribed and sworn to before me this 27th day of March, 1950.

[Seal] /s/ FAY V. DEALEY,

Notary Public in and for
Said County and State.

[Endorsed]: Filed March 27, 1950. [19144]

At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 27th day of March, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

For hearing on motion that Flora E. Mallonee,

Mabel E. Fergus, and Winnie Bucklin, the presently constituted Shareholders' Protective Committee of Long Beach Savings & Loan Assoc., be made parties plaintiff,—Paul L. Mallonee and C. H. Newhouse being deceased; Wyckoff Westover, Esq., appearing as counsel for plaintiffs and Shareholders' Protective Committee; Chas. K. Chapman, Esq., appearing as counsel for defendant Long Beach Federal Savings & Loan Assoc.; Irving Bishop, Esq., appearing as counsel for defendants Federal Home Loan Bank of San Francisco; Paul Fitting, Asst. U. S. Atty., and Wm. F. McKenna, Esq., of general counsel, appearing as counsel for Federal Home Loan Bank Board, John H. Fahey, and A. V. Ammann;

Copy of license of Shareholders' Protective Committee of Long Beach Savings & Loan Assoc. to do business is filed.

Supplemental points and authorities in support of motion for substitution of parties is filed.

Objection to motion for substitution of parties plaintiff is overruled and said motion is granted, Attorney Westover to prepare written order. [19145]

[Title of District Court and Cause.]

AFFIDAVIT OF RICHARD FITZPATRICK
COUNTERING AFFIDAVIT OF A. V.
AMMANN IN OPPOSITION TO MOTION
AND PETITION OF PLAINTIFF, FIRST
FEDERAL SAVINGS AND LOAN ASSO-
CIATION OF WILMINGTON, FOR AL-
LOWANCE OF ATTORNEYS' FEES AND
COSTS IN CLASS ACTION

State of California,
County of Los Angeles—ss.

Richard Fitzpatrick, being first duly sworn, deposes and says:

1. He is one of the attorneys for the Federal Home Loan Bank of Los Angeles, plaintiff in Civil Action No. 5678-P.H., and [19146] one of the attorneys for five of the six association plaintiffs in said action, the sixth association plaintiff in said action being represented by W. I. Gilbert, Esq.

2. He has read the affidavit of A. V. Ammann in opposition to motion and petition of plaintiff, First Federal Savings and Loan Association of Wilmington, for allowance of attorneys' fees and costs in class action, dated March 9, 1950, and filed herein.

3. It is not true, as stated in said affidavit of A. V. Ammann on page 2, lines 14 to 22, that said Ammann's assignment to the Federal Home Loan Bank of Los Angeles in March, 1946, "had no ref-

erence to any proposal with respect to consolidating the Federal Home Loan Bank of Los Angeles," but was "for the purpose of assisting the employee of the Federal Home Loan Bank Administration who was then assigned to the duty of supervising all associations in the Twelfth Federal Home Loan Bank District."

4. It is not true, as stated in said affidavit of A. V. Ammann on page 3, lines 14 to 16, that the purpose of said "spot checks" referred to therein was to ascertain "the extent to which said associations may have been induced by either Richard FitzPatrick or Charles Berry to employ said Richard FitzPatrick."

5. It is not true, as stated in said affidavit of A. V. Ammann on page 3, lines 27 to 32, and on page 4, lines 1 to 7, that said "spot checks" were not made "with a view toward taking any supervisory action on account of any appropriations that might have been made for the purpose of contesting the consolidation of the Los Angeles Bank; that, on the contrary said special limited examination was made solely for the purpose of determining whether there had been violations of regulations of the Federal Home Loan Bank Board which prohibited attorneys employed by the Federal Home Loan Bank from acting as attorneys for member associations without the consent of the Board, and for the purpose of determining whether the said Charles Berry had engaged in any [19147] improper conduct as an officer of the Los Angeles Bank."

6. It is not true, as stated in said affidavit of A. V. Ammann on page 2, lines 29 to 32, and on page 3, lines 1 to 6, "that it appeared from said memorandum that said Richard FitzPatrick while an employee of that Bank [Federal Home Loan Bank of Los Angeles] had solicited or was soliciting some twenty-five or more savings and loan associations named in said memorandum (which associations were members of said Bank) to induce them to engage his services as attorney; that said memorandum further indicated that Charles Berry, then an officer of said Bank and then engaged in supervising the said associations on behalf of the Federal Home Loan Bank Board was also then soliciting said associations, or some of them, to engage the services of said Richard FitzPatrick."

7. In amplification and explanation of the foregoing denials, affiant states:

With regard to the foregoing denial that the purpose of Ammann's assignment to the Federal Home Loan Bank of Los Angeles in March, 1946, had no reference to any proposal with respect to consolidating the Federal Home Loan Bank of Los Angeles but was for the purpose of assisting the employee of the Federal Home Loan Bank Administration who was then assigned to the duty of supervising all associations in the Twelfth Federal Home Loan Bank District, affiant states that on March 13, 1946, defendant John H. Fahey, as Federal Home Loan Bank Commissioner, wrote to Honorable John W. Snyder, Director, War Mobili-

zation and Reconversion, The White House, Washington, D. C., requesting his clearance of said Fahey's proposed action to consolidate the Federal Home Loan Bank of Los Angeles with the Federal Home Loan Bank of Portland and requesting said Snyder's approval of said Fahey's order of consolidation, a copy of which was attached to the said letter. A copy of said letter is attached as [19148] Exhibit C to the affidavit of Ernest E. Reardon dated September 20, 1949, which affidavit is in turn attached to the memorandum of the so-called "official defendants" in opposition to motions for orders directing payment of attorneys' fees on account and repayment of moneys advanced and the supplements thereto, which said memorandum was filed herein.

Affiant quotes the last paragraph of said letter of said defendant John H. Fahey, as Federal Home Loan Bank Commissioner, as follows:

"As I have explained when some weeks ago I discussed briefly with the President the advisability of consolidating some of these Banks, he suggested that I check with you. I would, therefore, appreciate your clearance of my proposed action and approval of the attached order which I propose to have promulgated. As a temporary budget of the Los Angeles Bank expires March 31, 1946, and as it is our intention to effect the consolidation before that time the matter is of considerable urgency."

Affiant also refers to a memorandum dated March 19, 1946, marked "Confidential" and bear-

ing the initials "J.H.F.," which memorandum is attached as Exhibit E to the affidavit of Ernest E. Reardon above mentioned, from which affiant quotes a part thereof as follows:

"At about 3:15 I was informed that Mr. Snyder had called and wished me to call back. I called him promptly when he said immediately that there was no occasion for any delay in the matter and I could 'go straight ahead' with the plan I discussed with him."

On March 22, 1946, defendant John H. Fahey, as Federal Home Loan Bank Commissioner, designated and appointed A. V. Ammann an Assistant Secretary to the Federal Home Loan Bank Administration by Order No. 5057 of said Federal Home Loan Bank Administration. A copy of said order was published in the Federal Register, Volume 11, No. 169, Page 9479, on August 29, 1946. Affiant quotes part of said order as follows: [19149]

"[Order 5057]

"Appointment of Assistant Secretary of Federal Home Loan Bank Administration to Exercise Authority of Secretary of Said Administration

March 22, 1946

"Effective immediately Albert V. Ammann is hereby designated and appointed Assistant Secretary to the Federal Home Loan Bank Administration. The said Albert V. Ammann shall serve as such without any compensation additional to that received as Assistant Chief

Supervisor. * * * The said Albert V. Ammann may at his option sign any instrument or writing as A. V. Ammann."

A. V. Ammann appeared at the offices of the Los Angeles Bank about a week or so prior to March 29, 1946, and thereafter, to and including the 29th day of March, 1946, and thereafter spent a part of the time during the business hours of said Bank in its offices.

On the morning of March 29, 1946, and prior to the seizure of the Federal Home Loan Bank of Los Angeles at about 12:00 o'clock noon of said day, said A. V. Ammann, by appending his signature to a form of certification thereon, certified as Assistant Secretary of the Federal Home Loan Bank Administration, that the copies of Orders No. 5082, 5083 and 5084 (which were served upon Charles E. Berry, as Vice-President of said Federal Home Loan Bank of Los Angeles at the time possession of said Bank was seized) were orders issued by the Federal Home Loan Bank Administration on March 29, 1946. Said certification was made by said A. V. Ammann upon receipt by him of telephonic advice from the Federal Home Loan Bank Administration in Washington, D. C., that said orders had been issued on that day. Said A. V. Ammann was in the offices of the Federal Home Loan Bank of Los Angeles at the time of its seizure by officials and employees of the Federal Home Loan Bank Administration and took part in such seizure.

It is, therefore, affiant's information and belief and he, therefore, states the fact to be, that said

Ammann was sent [19150] by the defendant John H. Fahey, as Federal Home Loan Bank Commissioner, to the Federal Home Loan Bank of Los Angeles about a week or so prior to March 29, 1946, for the purpose of being on hand at the time of the proposed seizure of said Bank so as to certify, as an Assistant Secretary of said Federal Home Loan Bank Administration, to the said Orders No. 5082, 5083, and 5084, and for the purpose of taking part with other employees and officials of the Federal Home Loan Bank Administration in the seizure of said Bank; that he was not sent to the Los Angeles Bank for the purpose of assisting the employee of the Federal Home Loan Bank Administration who was then assigned to the duty of supervising associations in the Twelfth Federal Home Loan Bank District, as averred in said affidavit of said Ammann.

8. With regard to the foregoing denial that the purpose of the "spot checks," referred to in said affidavit of A. V. Ammann, was to ascertain "the extent to which said associations may have been induced by either Richard FitzPatrick or Charles Berry to employ said Richard FitzPatrick," and with regard to the foregoing denial that said "spot checks" were not made with a view toward taking supervisory action on account of any appropriations that might have been made for the purpose of contesting the consolidation of the Los Angeles Bank, and with regard to the foregoing denial that the said "spot checks" were made solely for the purpose of determining whether there had been any

violations of the regulations of the Federal Home Loan Bank Board which prohibited attorneys employed by the Federal Home Loan Bank from acting as attorneys for member associations without the consent of the Board and for the purpose of determining whether the said Charles E. Berry had engaged in any improper conduct as an officer of the Los Angeles Bank, affiant states:

He had resigned as counsel for the Federal Home Loan Bank of Los Angeles on July 30, 1940, nearly six years prior to [19151] the making said "spot checks."

A copy of affiant's letter of resignation as counsel for the Federal Home Loan Bank is as follows:

"July 30, 1940

"The Honorable Board of Directors,
"Federal Home Loan Bank of Los Angeles,
"311 South Spring Street,
"Los Angeles, California.

"Gentlemen:

"I regret that personal interests force me to resign as general counsel for the Bank, effective September 1, 1940.

"The nearly eight years of my connection with the Bank have been exceedingly pleasant and in many respects full of satisfaction. I have enjoyed taking part in the pioneering of the Bank System, the Federal Savings and Loan System and the Insurance Corporation, and in working with the leaders of the savings and loan industry, who have constituted the membership of the Board of Directors.

“I hope those friendships I have made among members of the Board and among the officers will remain with me throughout my life.

“May I offer to each member of the Board, each officer and each member of the staff, my very best wishes.

“Sincerely,

“RICHARD FITZ PATRICK.”

On July 31, 1940, affiant wrote to James Twohy, then Governor of the Federal Home Loan Bank System, advising him of his resignation as counsel for the Federal Home Loan Bank of Los Angeles. A copy of affiant's said letter is as follows:

“July 31, 1940

“Mr. James Twohy, Governor,
“Federal Home Loan Bank System,
“Federal Home Loan Bank Board,
“Washington, D. C.

“Dear Mr. Twohy:

“I am today delivering to Mr. Hurford [President of the Federal Home Loan Bank of Los Angeles] the original of the enclosed letter resigning my position as counsel for the Federal Home Loan Bank of Los Angeles.

“It is somewhat of a wrench to leave the institution which, for nearly eight pleasant and interesting years, I [19152] have looked upon as partly my baby. However, I felt that I could not longer serve the Bank at the expense of my own interests. My inability, under the Regulations, to represent

members of the Bank or to accept retainers from them makes it necessary for me to take this step.

“Although I shall no longer be connected with the Bank and the Board, my interest in them and in the men connected with them will always remain. I trust that our friendship, and that of the other men in Washington whom I have come to know, will continue throughout the years.

“When you are in Los Angeles I hope that I shall continue to have the opportunity of seeing you.

“Kindest regards and best wishes!

“Sincerely yours,

“RICHARD FITZ PATRICK.”

“Airmail

“RF:MC”

Thereafter, affiant received from said James Twohy a reply to said letter. A copy of said reply is as follows:

“Federal Home Loan Bank Board

“Washington

“August 2, 1940

“Office of the Governor,

“Federal Home Loan Bank System.

“Mr. Richard FitzPatrick,

“Williamson, Hoge & Judson,

“433 South Spring Street,

“Los Angeles, California.

“Dear Mr. FitzPatrick:

“Your letter of July 31 has just come in, and the news of your resignation is as much regretted by

me as the wrench of leaving the institution is to you.

“When the official announcement comes along on the belt-line in due course, the matter will be processed in formal fashion. Meantime, I hasten to dispatch this personal note that you may know that I genuinely share your own feelings regarding the separation. I can well understand the reasons you recount for making this reluctant move, and certainly wish you most cordially all the success that your rich experience and fine talents will bring you.

“Sincerely yours,

“(Initialed) J T

“James Twohy,

“Governor.” [19153]

On August 16, 1940, at a regular meeting of the Board of Directors of said Los Angeles Bank, held on said date, the following resolution accepting the resignation of affiant as counsel for said Bank was adopted:

“Whereas, Richard FitzPatrick has served this Bank as its general counsel since the organization of the Bank in October, 1932, and has rendered, during that time, professional services of inestimable value to this Bank and to its members, and has, by his diligence, his cooperation, and his professional excellence, contributed in great measure to the advancement not only of this Bank but of the Federal Home Loan Bank System, and

“Whereas, in addition to maintaining high professional standards, Mr. FitzPatrick has, as an individual, displayed fine human qualities which

have endeared him to the members of this board and to the members of the staff of this Bank, and

“Whereas, Mr. FitzPatrick now finds it necessary, for the protection of his personal interests and his private law practice, to resign his position as general counsel of this Bank, effective September 1, 1940;

“Now Therefore, Be It Resolved: That this board accepts, with regret, the resignation of Richard FitzPatrick, General Counsel, and expresses to him its appreciation for the services which he has rendered to the Bank.”

Said special limited examination of the legal expense accounts of associations (the so-called “spot checks”) could not show whether or not affiant or Charles E. Berry had induced said associations to employ affiant, or affiant or said Charles E. Berry had solicited such associations to engage the services of affiant, and said A. V. Ammann and the officials of the Federal Home Loan Bank Administration well knew such to be the fact. All that such special limited examination of the legal expense accounts of associations could or would or did show was that certain sums of money had been paid to affiant as attorney for the association. Such information, if desired by said A. V. Ammann or the Federal Home Loan Bank Administration, could have been obtained simply and easily by examining the Reports of Examination of said associations on file in the Federal Home Loan Bank of Los Angeles and on file with the [19154] Federal Home Loan Bank Administration in Washington,

D. C. Schedule 7 on page 14 of each Report of Examination of an association shows, among other things, the name of each attorney rendering legal services to the association and the amount of money paid to him therefor. This is the same information shown upon the books of the association and is taken from its legal expense account.

It is, therefore, affiant's information and belief and he, therefore, states the fact to be, that said "spot checks" were not made for the purpose stated in said A. V. Ammann's affidavit, but were made for the purpose of ascertaining whether the association so examined had made any contribution to the Federal Home Loan Bank Stockholders' Committee, which had theretofore been organized and, if so, the amount thereof, in order to take disciplinary action against said association, and for the purpose of intimidating all associations in the Twelfth Federal Home Loan Bank District from making such contributions.

Affiant states that the fact that such "spot checks" had been and were being made very rapidly became known to the executive officers and boards of directors of savings and loan associations in the Twelfth Federal Home Loan Bank District and that many of them were thereby intimidated and frightened into not making any contribution to the Federal Home Loan Bank Stockholders' Committee out of the assets of their respective associations for fear of reprisals against their respective associations by the defendant John H. Fahey, as Federal Home Loan Bank Commissioner.

It is, therefore, affiant's information and belief and he, therefore, states the fact to be, that said "spot checks" were made solely for the purpose of ascertaining whether the associations so examined had made contributions to the Federal [19155] Home Loan Bank Stockholders' Committee and for the purpose of intimidating all associations in the Twelfth Federal Home Loan Bank District from making any such contributions.

9. With regard to the foregoing denial that said memorandum of affiant (dated August 4, 1940, nearly six years prior to the making of said "spot checks," which "spot checks" were made nearly six years after affiant had resigned as counsel for the Federal Home Loan Bank of Los Angeles) from which memorandum it is alleged by said A. V. Ammann that it appeared that affiant, while an employee of the Los Angeles Bank, had solicited or was soliciting savings and loan associations to induce them to engage his services as attorney and that Charles E. Berry was also soliciting said associations, or some of them, to engage the services of affiant, affiant states:

About the time affiant submitted his resignation as counsel for the Los Angeles Bank, affiant considered whether he should attempt to establish a specialized counsel service for savings and loan associations in the State of California, designed to keep those associations, which might engage affiant's services, informed of developments in the law and the rules and regulations governing their opera-

tions, and of the policies of the supervisory authorities in supervising such associations. As part of such consideration, he prepared an outline of such a service and discussed it with Charles E. Berry.

Charles E. Berry had been for many years, was then, and still is, a close personal friend of affiant. Because of said Berry's long association with, and intimate knowledge of, the savings and loan industry in the State of California and elsewhere, affiant believed that his advice would be helpful to him in determining whether he should attempt to establish such a service. [19156]

Affiant also, in attempting to determine whether or not he should establish such a service, consulted a number of savings and loan executives in the State of California. The executives he consulted were and are personal and social friends whom he had known intimately for many years.

Affiant explained to each of such friends his idea and exhibited to him an outline of the service he was considering establishing and inquired of him whether, in his opinion, associations in the State of California would be interested in obtaining such a service from affiant and what monthly sum he thought either his association or other associations would be willing to pay for such service.

After each such interview with his said friends, affiant made a memorandum of his friend's reaction to the proposed establishment of such a service and of the monthly amount that such friend thought his own institution or other institutions might be willing to pay therefor.

Having completed the survey among his friends above described, affiant again consulted Charles E. Berry again seeking his advice as to whether or not affiant should undertake to establish such a service in the light of the information obtained through such survey. He showed said Berry the memorandum of his survey, discussed it with him and left it in his possession. Said Berry placed said memorandum in his personal file in the offices of the Federal Home Loan Bank of Los Angeles.

When the Federal Home Loan Bank of Los Angeles was seized by officials and employees of the Federal Home Loan Bank Administration, nearly six years later, they took possession of the personal files of said Charles E. Berry and examined the same.

Ray E. Dougherty, Associate General Counsel of the Federal Home Loan Bank Administration, testified before the House of Representatives Special Committee to Investigate Executive [19157] Agencies, which investigated the seizures of the Los Angeles Bank and of the Long Beach Federal Savings and Loan Association, as follows:

“Mr. Fischbach (Counsel for the Committee): Did you go through any of those files [personal files of Charles E. Berry] and take any of these papers out; and specifically, did you go through the file in which Exhibit 5 or the original of Exhibit 5 was contained and retain that in the possession of the Administration?”

“Mr. Dougherty: I rather think I did; yes.

“Mr. Fischbach: And this is the paper that you retained?

“Mr. Dougherty: One of them. I did not retain it, no; it is still in the Bank.” (Emphasis added.)

It is stated in said affidavit of A. V. Ammann that affiant's said memorandum was “transmitted to the offices of the Federal Home Loan Bank Administration in Washington, D. C.” Affiant therefore, does not have, and has not seen, said memorandum since the delivery thereof to said Charles E. Berry nearly ten years ago. Consequently, affiant cannot now recall in detail the contents of said memorandum but affiant does know, and unequivocally states, that he never at any time while an employee of the Federal Home Loan Bank, or at any other time, solicited any savings and loan association, or any other person, firm or corporation whatsoever, to engage his services as an attorney.

Affiant is informed and believes and therefore states the fact to be that Charles E. Berry never, while an officer of the Federal Home Loan Bank of Los Angeles, or at any other time, solicited any savings and loan association or any other person, firm or corporation whatsoever to engage affiant's services. Charles E. Berry has, however, on more than one occasion during the years of his friendship with affiant, recommended affiant to savings and loan associations and to [19158] others seeking the services of a lawyer, but no such recommenda-

tion was ever at any time a solicitation on behalf of affiant or in any other respect improper.

/s/ RICHARD FITZPATRICK.

Subscribed and sworn to before me this 20th day of March, 1950.

[Seal] /s/ J. SCOTT WELLER,
Notary Public in and
For said County and State.

[Endorsed]: Filed March 30, 1950. [19159]

[Title of District Court and Cause.]

AFFIDAVIT OF W. I. GILBERT, JR.

State of California,
County of Los Angeles—ss.

W. I. Gilbert, Jr., being first duly sworn, deposes and says:

That he is the attorney for the plaintiff First Federal Savings and Loan Association of Wilmington. That in connection with the application of said First Federal Savings and Loan Association of Wilmington for attorney's fees the Court heretofore [19160] fixed the 15th day of March, 1950, as the date for filing of further affidavits in connection with said hearing and thereafter, upon the application of Federal Home Loan Bank of San Francisco, extended said time to March 20, 1950.

That there was filed in connection with said pro-

ceedings an affidavit of A. V. Ammann wherein the said A. V. Ammann recites certain alleged conduct to have taken place by Richard Fitzpatrick, who is one of the attorneys for some of the plaintiffs herein. That in order to protect the professional integrity of said Richard Fitzpatrick denials of said allegations are desired to be filed.

Wherefore affiant prays that leave be granted to file the affidavit of Richard Fitzpatrick countering the affidavit of A. V. Ammann.

/s/ W. I. GILBERT, JR.

Subscribed and sworn to before me this 29th day of March, 1950.

[Seal] /s/ BERNICE H. STOAKES,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed March 30, 1950. [19161]

[Title of District Court and Cause.]

ORDER GRANTING PERMISSION TO FILE
AFFIDAVIT OF RICHARD FITZPATRICK

Upon reading the affidavit of W. I. Gilbert, Jr., requesting permission to file the affidavit of Richard Fitzpatrick countering the affidavit of A. V. Ammann; and Good Cause Appearing Therefor,

It is Hereby Ordered that said affidavit of Richard Fitzpatrick may be filed in the application of the First Federal [19162] Savings and Loan Association of Wilmington for attorney's fees.

Dated: March 29, 1950.

/s/ PEIRSON M. HALL,
Judge.

[Endorsed]: Filed March 30, 1950. [19163]

[Title of District Court and Cause.]

REASONS IN OPPOSITION TO, AND MOTION TO STRIKE, THE "MOTION FOR ORDER OF COURT REQUIRING DEFENDANTS AND CROSS-DEFENDANTS HOME LOAN BANK BOARD, ET AL., AND THEIR DEPUTIES, AGENTS, EMPLOYEES, ETC., TO APPEAR AND TESTIFY."

Come Now defendants, the Home Loan Bank Board, an agency of the Executive Branch of the Government of the United States, William K.

Divers, Chairman; J. Alston Adams, Member; and O. K. LaRoque, Member, of the Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation, an instrumentality of the United States wholly owned by the United States, John H. Fahey, A. V. Ammann and George K. Bramley, and without waiving their objections to the jurisdiction of this Court over their respective persons and their other objections including objections to the jurisdiction and to venue, but specifically hereby reserving and asserting the same, file this their Reasons in Opposition to, and Motion to Strike, the "Motion for Order of Court Requiring Defendants and Cross-Defendants [19175] Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc., to Appear and Testify."

This Opposition and Motion are made upon all the specific grounds of jurisdiction and venue previously asserted in this cause by the parties to this Opposition, and particularly on Grounds (a) through (1) of the "Opposition, and Points and Authorities in Support Thereof, to 'Motion for Substitution of Parties Plaintiff Under (Rule 25 F.R.C.P.)'," filed by these parties on March 22, 1950.

In addition, the parties hereto oppose said Motion for Order, and move that it be stricken, upon the following grounds:

1. The relief prayed for in the motion is unreasonable, unduly burdensome, and oppressive;

2. No necessity is shown in the motion for the unusual relief therein requested;

3. The deposition of John H. Fahey is being taken by means of written interrogatories;

4. The relief requested is beyond the scope of Rule 43(e) of the F.R.C.P.;

5. The motions and the affidavits in support thereof are too vague and indefinite to justify any relief;

6. The relief sought is not necessary to enable movants to attempt to answer the affidavits heretofore filed;

7. There is no basis in law for the relief herein sought;

8. The parties seeking the extraordinary relief hereunder are not those whose motions for fees and expenses are before the Court and in connection with which the contested affidavits were filed;

9. No one named in the motion has been properly served with any process within the State of California, except A. V. Ammann;

10. No one named in the motion, to the extent that he can be now identified, is presently within the State of California, or is within 100 miles of this Court, except Irving Bogardus; [19176]

11. John M. Wyman, R. J. Strecker, and the individuals designated in the motion as "their servants, agents, deputies, employees, assistants, subordinates, and others subject to their direction and

control," to the extent they can be identified, are not parties to this action;

12. Neither a corporation nor a board can testify;

13. William K. Divers, O. K. LaRoque, and J. Alston Adams have not been sued in their individual capacities;

14. The motion is sham;

15. The information allegedly needed to answer the affidavits is either in the hands of the moving parties, or is being asked for in the Fahey deposition proceedings;

16. William K. Divers, J. Alston Adams, and O. K. LaRoque, are officers of the United States, appointed by the President with the advice and consent of the Senate. The individuals designated as "their servants, agents, deputies, employees, assistants, subordinates, and others subject to their direction and control are presumably employees of the United States without other relationship of any nature to any of the defendants herein except their employment by the United States. R. J. Strecker and John M. Wyman are employees of the United States and have no other relationship of any nature to any of the defendants herein except their employment by the United States."

Wherefore, these parties hereby oppose said Motion for Order and will move this Court at the time and place now set for the hearing on said Motion for Order that said Motion for Order be stricken.

This Opposition and Motion to strike are made on the grounds stated in this Opposition and Motion, the attached affidavits, and the files in this case.

Respectfully submitted,

ERNEST A. TOLIN,

United States Attorney.

CLYDE C. DOWNING and

PAUL FITTING,

Assistant U. S. Attorneys.

By /s/ PAUL FITTING,

Attorneys for Home Loan Bank Board; Wm. K. Divers, Chairman; J. Alston Adams, Member; and O. K. LaRoque, Member of the Home Loan Bank Board; Federal Savings & Loan Insurance Corporaion, an instrumentality of the U. S. wholly owned by the U. S.; John H. Fahey, A. V. Ammann and George K. Bramley. [19177]

AFFIDAVIT

United States District Court,
Southern District of California—ss.

Paul Fitting, being duly sworn deposes and says:
That he is an Assistant United States Attorney for the Southern District of California;

That he filed or caused to be filed in the above-cause on March 20, 1950, the following affidavits:

1. John H. Fahey dated March 18, 1950;
2. John M. Wyman dated March 17, 1950;

3. William K. Divers dated March 18, 1950;
4. John H. Fahey dated April 19, 1949;
5. R. J. Strecker dated April 22, 1949;
6. John M. Wyman dated April 19, 1949.

That the filing of such affidavits on such date was not an attempt to prevent any party to this litigation from producing appropriate contrary testimony and evidence.

/s/ PAUL FITTING.

Subscribed and sworn to before me this 4th day of April, 1950.

[Seal]

EDMUND L. SMITH,

Clerk, U. S. District Court.

By /s/ WM. A. WHITE,

Deputy. [19178]

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM F. McKENNA

William F. McKenna, being first duly sworn upon oath deposes and says:

He is an Assistant General Counsel for the Home Loan Bank Board, which is an agency of the executive branch of the Government.

He is personally acquainted with the William K. Divers, O. K. LaRoque, J. Alston Adams, John M. Wyman and R. J. Strecker, named in the "Motion for Order of Court Requiring Defendants and Cross-Defendants Home Loan Bank Board, et al.,

and Their Deputies, Agents, Employees, etc., to Appear and Testify": [19179]

Said William K. Divers is Chairman of the Home Loan Bank Board and in said official capacity is a resident of the District of Columbia. The said William K. Divers as an individual is a resident of the State of Ohio and is not a resident of the State of California.

Said O. K. LaRoque is a member of the Home Loan Bank Board and is a resident of the District of Columbia. The said O. K. LaRoque is not a resident of the State of California.

Said J. Alston Adams is a member of the Home Loan Bank Board and in said official capacity is a resident of the District of Columbia. The said J. Alston Adams as an individual is a resident of the State of New Jersey and is not a resident of the State of California.

Said John M. Wyman is Chief Supervisor, Home Loan Bank Board, and as such his official station is in the District of Columbia. The said John M. Wyman is a resident of the State of Maryland and is not a resident of the State of California.

Said R. J. Strecker is District Examiner, Third Federal Home Loan Bank District, Home Loan Bank Board, and as such his official station is in the State of Pennsylvania. The said R. J. Strecker is a resident of the State of Pennsylvania and is not a resident of the State of California.

Affiant is informed and believes and therefore states that no one of the said William K. Divers, O. K. LaRoque, J. Alston Adams, John M. Wyman

and R. J. Strecker has ever been a resident of the State of California.

/s/ WILLIAM F. McKENNA.

Subscribed and sworn to before me this 4th day of April, 1950.

[Seal]

EDMUND L. SMITH,
Clerk, U. S. District Court.

By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: Filed April 4, 1950. [19180]

[Title of District Court and Cause.]

ANSWER AND OBJECTIONS OF FEDERAL HOME LOAN BANK OF SAN FRANCISCO TO MOTION OF MALLONEE, BUCKLIN AND FERGUS, THE SHAREHOLDER MEMBERS PROTECTIVE COMMITTEE OF THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION; LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, CROSS-CLAIMANTS AND THIRD PARTY PLAINTIFFS; TITLE SERVICE COMPANY, A CORPORATION, DEFENDANT AND CROSS-CLAIMANT IN INTERPLEADER; ROBERT H. WALLIS, DEFENDANT AND CROSS-CLAIMANT IN INTERPLEADER; AND GEORGE TURNER, DEFENDANT AND CROSS-CLAIMANT IN INTERPLEADER, FOR ORDER OF COURT REQUIRING DEFENDANTS AND CROSS-DEFENDANTS HOME LOAN BANK BOARD, ET AL., AND THEIR DEPUTIES, AGENTS, EMPLOYEES, ETC, TO APPEAR AND TESTIFY

Comes now Federal Home Loan Bank of San Francisco, defendant in civil action No. 5678-PH (W.M.), and cross-defendant and third party defendant in civil action No. 5421-PH, and without waiving any of its objections heretofore made in each of said actions as to the venue or jurisdiction of this Court over the person of this defendant or the subject matter of said actions or either thereof,

but specifically reserving and asserting said objections and each one thereof, and all of its other objections to jurisdiction and venue of this Court, and answers the motion of Mallonee, Bucklin and Fergus the Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, Long Beach Federal Savings and Loan Association, cross-claimants and third-party plaintiffs, Title Service Company, a corporation, defendant and cross-claimant in interpleader, Robert H. Wallis, defendant and cross-claimant in interpleader, and George Turner, defendant and cross-claimant in interpleader, for order of court requiring defendants and cross-defendants Home Loan Bank Board, et al., and their deputies, agents and employees, etc., to appear and testify, and respectfully objects to the granting of said motion or the making or entry of any order thereon, upon the grounds and authorities hereinafter set forth and those incorporated herein by reference. [19185]

I.

Federal Home Loan Bank of San Francisco hereby refers to the pleadings, motions, points and authorities and other documents hereinafter set forth in this paragraph I with like force and effect as if each one were herein set forth in full:

Complaint in Federal Home Loan Bank of Los Angeles, a body corporate, et al., plaintiffs vs. Federal Home Loan Bank of Portland, et al., defendants, Action numbered 5678 (W.M.); Motion of Federal Home Loan Bank of San Francisco to

dismiss said complaint and memorandum of points and authorities filed in support thereof; Answer of Federal Home Loan Bank of San Francisco to said complaint;

First Amended and Supplemental Complaint to Cancel the Fraudulent and Void Appointment of Conservator, to Quiet Title, For Return of Property, Declaratory Relief, Accounting and Injunction, in Action 5421; Motion of Federal Home Loan Bank of San Francisco, William A. Davis and Gerrit Vander Ende to Dismiss said First Amended and Supplemental Complaint and for Summary Judgment, and Memorandum of Points and Authorities filed in support thereof; and Answer of said Federal Home Loan Bank of San Francisco, William A. Davis and Gerrit Vander Ende to said First Amended and Supplemental Complaint;

Third-Party Complaint of Long Beach Federal Savings and Loan Association and Motion of Federal Home Loan Bank of San Francisco for Summary Judgment or to Dismiss said Third-Party Complaint in Action 5421, dated January, 1948, and Points and Authorities in Support of said motion;

Answer of Long Beach Federal Savings and Loan Association to: (a) Plaintiff's First Amended and Supplemental [19186] Complaint; (2) Cross-Claim in Interpleader of Defendant Title Service Company; (3) Cross Claim in Interpleader of Defendant Robert H. Wallis; and Amended Cross-Claim of Defendant Long Beach Federal Savings and Loan Association in Action 5421; and Supplemental to Cross-Claim to Amended Cross-Claim of De-

fendant Long Beach Federal Savings and Loan Association filed 1-12-48 with Answer to (1) Plaintiff's First Amended and Supplemental Complaint; (2) Cross-Claim in Interpleader of Defendant Title Service Company; (3) Cross-Claim in Interpleader of Defendant Robert H. Wallis, in Action 5421; Motion of Federal Home Loan Bank of San Francisco and William A. Davis and Gerrit Vander Ende to Dismiss said Amended Cross-Claim and Supplemental Cross-Claim to Amended Cross-Claim and for Summary Judgment, and Points and Authorities filed in support thereof; and the answers of said Federal Home Loan Bank of San Francisco, William A. Davis and Gerrit Vander Ende to said Amended Cross-Claim and said Supplemental Cross-Claim to said Amended Cross-Claim.

Motion of Long Beach Federal Savings and Loan Association for Order Requiring Federal Home Loan Bank of San Francisco and Federal Home Loan Bank of Los Angeles to Deposit With the Registry of the Court Amount of Their Disputed Claims Against Long Beach Federal Savings and Loan Association From Collateral in Possession One or Both of Said Federal Home Loan Banks and to Redeliver Immediately All Excess Collateral Held by Either or Both of Such Federal Home Loan Banks;

Return of Third-Party Defendant Federal Home Loan Bank of San Francisco, to Order to Show Cause, dated February 9, 1948, and in Resistance to Motion of Long Beach Federal Savings & Loan Association verified February 9, 1948; [19187]

Order Requiring Deposit of Certain Notes, Deeds of Trust, U. S. Government Bonds and Other Collateral Held by The Federal Home Loan Bank of San Francisco;

Motion of Cross-Defendant Federal Home Loan Bank of San Francisco to Vacate and Set Aside Order of Interpleader and Impound of Its Property Made by the Above-Entitled Court on March 13, 1948, and to Dismiss Petition, Motion and Order to Show Cause of Cross-Defendant Long Beach Federal Savings and Loan Association, Upon Which Pleading Said Order Was Granted, and for an Order Directing the Clerk of the Above-Entitled Court to Return to Cross-Defendant Federal Home Loan Bank of San Francisco All of Its Notes, Securities and Other Property Now Held in the Registry of the Above-Entitled Court, and Points and Authorities Filed in Support Thereof.

II.

Federal Home Loan Bank of San Francisco, defendant, cross-defendant and third-party defendant, hereinafter referred to as San Francisco Bank, denies each and all of the allegations of said motion specifically set forth in paragraphs 2, 3, 6 and 7 thereof.

III.

San Francisco Bank denies the allegations contained in paragraph 4 of said motion, that said material could have been filed and/or served by said defendants and cross-defendants within the Court's previous requirements as to filing of objec-

tions and counter-affidavits, and alleges that said material and affidavits were filed in answer to purported evidence offered by said moving parties at the hearing on February 27 and 28, 1950, and admitted by the Court over the objections of said San Francisco Bank. [19188]

IV.

San Francisco Bank denies the allegation of paragraph 5 of said motion that Long Beach Association was ever seized or that there ever was at any time an attempted or any confiscation of said Long Beach Association.

V.

San Francisco Bank does not have sufficient information or belief to enable it to answer the statements and allegations of paragraph 8 of said motion, and basing its denial upon that ground denies each and every, all and singular the statements and allegations in said paragraph 8 contained.

VI.

San Francisco Bank alleges that each and all of the persons sought to be ordered to appear before this Honorable Court are non-residents of the State of California, and that no one of the said persons resides within the County of Los Angeles, State of California or within one hundred miles of the City of Los Angeles, State of California; that this Honorable Court has no personal jurisdiction over any of said persons sought to be brought before this Court.

VII.

Moving parties' request for production of all records and documents which are relevant and relate to the subject matter of this consolidated action or either action thereof, is indefinite and uncertain and is not a sufficient designation of the documents or papers sought to be produced, hence said motion should be denied.

VIII.

This Honorable Court is without jurisdiction to order a party to this action to produce its employees as witnesses. [19189]

IX.

This Court has no jurisdiction over the subject matter of these consolidated actions and over indispensable parties to this action and the venue is improper.

X.

The complaints, cross-claims and third-party complaints, together with all amendments and supplements thereto, seeking relief filed in these consolidated causes fail to state a cause or causes of action against this defendant and cross-defendant, or against any of the defendants or cross-defendants, upon which any relief may be granted.

XI.

The relief prayed for in said motion is unduly unreasonable and oppressive.

XII.

No necessity is shown in the motion for the

unusual and extraordinary relief therein requested.

XIII.

It appears from the face of said motion, and the supporting papers, that the alleged necessity does not exist in connection with any matters now pending before this Court, in that the moving parties state in their motion, among other things, that

“* * * most of the allegations set forth in said affidavits and exhibits are Extraneous to the Issues of Allowances of Attorneys’ Fees to the moving parties Federal Home Loan Bank of Los Angeles, et al., and First Federal Savings and Loan Association of Wilmington, et al., but if in evidenciary form, and if truthful, Would or Might in Part, be Pertinent to the Decision of Issues Concerning the Long Beach Association, * * *” [19190]

XIV.

There is no legal or valid basis for the relief herein sought.

XV.

The parties seeking the extraordinary relief hereunder are not those whose motions are now pending before this Court and in connection with which this relief is sought.

XVI.

The relief requested is not relevant or material to any matters that the moving parties now have pending before this Court, as is admitted by their motion and affidavits.

XVII.

The relief sought is not necessary to enable movants to attempt to answer the affidavits heretofore filed.

XVIII.

The motion and affidavits in support thereof are too vague, indefinite and uncertain to justify the relief sought.

XIX.

Proceedings have already been initiated and are now under way for the taking of the deposition of one of the defendants, to wit, John H. Fahey, by means of written interrogatories filed herein.

XX.

The relief requested has already been granted through the Discovery Proceedings under Rule 34 FRCP.

XXI.

The relief requested is beyond the scope of Rule 43(e) FRCP. [19191]

XXII.

The relief requested does not comply with Rule 45(e) FRCP, for the issuance of a subpoena because of the fact that all of the witnesses mentioned in said action do not reside within 100 miles of the place where this Court holds its hearings.

XXIII.

The relief requested is not authorized under Rule 26 FRCP.

XXIV.

On the further specific grounds previously asserted by this defendant and cross-defendant and particularly on the grounds (a) through (l) asserted in the "Opposition, and Points and Authorities in Support Thereof, to 'Motion for Substitution of Parties Plaintiff under (Rule 25 FRCP)' " filed herein on March 22, 1950, by the defendants and cross-defendants, commonly known in this action as the "Official Defendants," and in which opposition this defendant and cross-defendant filed in written joinder.

XXV.

That said motion and affidavits in support thereof are too vague, indefinite, uncertain, contradictory and unintelligible to support the relief sought in said motion.

XXVI.

That no one of the persons whose testimony is sought to be taken or obtained by said motion has been served within the State of California except A. V. Ammann, and the Court lacks process over each of said persons and is without jurisdiction to compel the attendance of said persons or any thereof to appear before this Honorable Court and testify. [19192]

XXVII.

That William K. Divers, O. K. LaRoque and J. Alston Adams have not been sued in their individual capacities.

XXVIII.

That John M. Wyman, R. J. Strecker, and the persons named and designated in said motion as "their servants, agents, deputies, employees, assistants, subordinates and others subject to their direction and control" are not parties to the above-consolidated action, or either one thereof, and are not within the State of California and have not been served with any process within said State.

Wherefore defendant, cross-defendant and third-party defendant Federal Home Loan Bank of San Francisco prays that said moving parties take nothing by their said motion herein and that said motion be denied, and for such other, further and different relief as to the court seems meet and just in the premises.

Dated this 1st day of April, 1950.

VERNE DUSENBERY,
PHILIP H. ANGELL,
SYLVESTER HOFFMANN, and
IRVING G. BISHOP,

By /s/ PHILIP H. ANGELL,

Attorneys for Federal Home Loan Bank of San
Francisco.

[Endorsed]: Filed April 5, 1950. [19193]

[Title of District Court and Cause.]

MOTION TO DISMISS "MOTION FOR ORDER
OF COURT REQUIRING DEFENDANTS
AND CROSS-DEFENDANTS HOME LOAN
BANK BOARD, ET AL., AND THEIR
DEPUTIES, AGENTS, EMPLOYEES, ETC.,
TO APPEAR AND TESTIFY," AND ALL
SUPPORTING PAPERS, OR IN THE AL-
TERNATIVE TO STRIKE THE SAME
FROM THE FILES

Comes Now the defendant and cross-defendant Federal Home Loan Bank of San Francisco, through the undersigned, its attorneys, and without waiving its objections to the jurisdiction of this Court over its person, and its other objections, including objections to jurisdiction and to venue, but specifically reserving, preserving and asserting the same, and moves this United States District Court to make an order dismissing the said "Motion for Order of Court Requiring Defendants and Cross-Defendants Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc., to appear and Testify," or to strike it and all supporting papers filed in connection therewith, from the files of this Court. Said motion is based and is made upon the following grounds:

1. This Court has no jurisdiction over the subject matter of these consolidated actions and over indispensable parties to this action and the venue is improper.

2. The complaints, cross-claims and third-party complaints, together with all amendments and supplements thereto, seeking relief filed in these consolidated causes fail to state a cause or causes of action against this moving defendant and cross-defendant, or against any of the defendants or cross-defendants upon which any relief may be granted.

3. The relief prayed for in said motion is unduly unreasonable and oppressive.

4. No necessity is shown in the motion for the unusual and extra-ordinary relief therein requested.

5. It appears from the face of said motion, and the supporting papers, that the alleged necessity does not exist in connection with any matters now pending [19200] before this Court, in that the moving parties state in their motion, among other things, that

“* * * most of the allegations set forth in said affidavits and exhibits are Extraneous to the Issues of Allowances of Attorneys' Fees to the moving parties Federal Home Loan Bank of Los Angeles, et al., and First Federal Savings and Loan Association of Wilmington, et al., but if in evidenciary form, and if truthful, Would or Might in Part, Be Pertinent to the Decision of Issues Concerning the Long Beach Association, * * *”

6. There is no legal or valid basis for the relief herein sought.

7. The parties seeking the extra-ordinary relief

hereunder are not those whose motions are now pending before this Court and in connection with which this relief is sought.

8. The relief requested is not relevant or material to any matters that the moving parties now have pending before this Court, as is admitted by their motion and affidavits.

9. The relief sought is not necessary to enable movants to attempt to answer the affidavits heretofore filed.

10. The motion and affidavits in support thereof are too vague, indefinite and uncertain to justify the relief sought.

11. Proceedings have already been initiated and are now underway for the taking of the deposition of one of the defendants, to wit: John H. Fahey, by means of written interrogatories filed [19201] herein.

12. The relief requested has already been granted through the Discovery Proceedings under Rule 34 FRCP.

13. The relief requested is beyond the scope of Rule 43(e) FRCP.

14. The relief requested does not comply with Rule 45 (e) FRCP, for the issuance of a subpoena because of the fact that all of the witnesses mentioned in said motion do not reside within 100 miles of the place where this Court holds its hearings.

15. The relief requested is not authorized under Rule 26 FRCP.

16. On the further specific grounds previously asserted by this defendant and cross-defendant and particularly on the grounds (a) through (1) asserted in the "Opposition, and Points and Authorities in Support Thereof, to 'Motion for Substitution of Parties Plaintiff Under (Rule 25 FRCP)'" filed herein on March 22, 1950, by the defendants and cross-defendants, commonly known in this action as the "Official Defendants," and in which opposition this moving defendant and cross-defendant filed its written joinder.

17. Said motion is and the relief called for is immaterial, and needlessly burdens a record already suffering from elephantiasis, consisting of over 14,000 pages of pleadings and thousands upon thousands of recorded words, without as yet resulting in the taking of a single deposition of a single witness, and but further delaying progress toward an eventual trial of these actions upon the merits.

18. The moving parties have not exhausted the available administrative remedies.

19. Said motion is filed for the purposes of delay. [19202]

That this motion is based upon all papers, files, documents and records in the above-entitled action and upon the notice and motion, affidavits and memorandum of points and authorities, and upon the grounds set forth in said motion.

Wherefore, defendants pray this Honorable Court make its Order or Orders:

1. Dismiss and deny all relief prayed for in the "Motion for Order of Court Requiring Defendants and Cross-Defendants Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc., to Appear and Testify," or in the alternative,

2. That said "Motion for Order of Court Requiring Defendants and Cross Defendants Home Loan Bank Board, et al., and Their Deputies, Agents, Employees, etc., to Appear and Testify" and each and all of the supporting papers filed therewith be stricken from the files of this Court.

3. For such other relief as this Court deems meet and proper.

Dated: April 4th, 1950.

VERNE DUSENBERRY,

PHILIP H. ANGELL,

IRVING G. BISHOP,

SYLVESTER HOFFMANN,

By /s/ SYLVESTER HOFFMANN,
Attorneys for Defendant and Cross Defendant
Federal Home Loan Bank of San [19203]
Francisco.

[Title of District Court and Cause.]

AFFIDAVIT OF RESIDENCE
OF IRVING BOGARDUS

State of California,

City and County of San Francisco—ss.

Irving Bogardus being first duly sworn, deposes and says: [19211]

That he is the Irving Bogardus named in the motion of Mallonee, Bucklin and Fergus, et al., Long Beach Federal Savings and Loan Association, Title Service Company, Robert H. Wallis and George Turner, for an order of court requiring defendants and cross-defendants Home Loan Bank Board, et al., and their deputies, agents, employees, etc., to appear and testify; said affiant is the former Acting President of the Federal Home Loan Bank of San Francisco; that said affiant does not now and never has resided in the County of Los Angeles, State of California, nor within 100 miles thereof; that said affiant now resides and for more than 11½ years last past has resided in the City of Tigard, County of Washington, State of Oregon; said affiant is now and for many years last past has been one of the Vice Presidents of the Federal Home Loan Bank of San Francisco and at the present time is employed in the San Francisco office of said Federal Home Loan Bank of San Francisco in the City and County of San Francisco, State of California, and said affiant does not now contemplate being personally present within the County of Los Angeles,

State of California, nor within 100 miles thereof within the immediate future.

Further affiant saith not.

/s/ IRVING BOGARDUS.

Subscribed and sworn to before me this 1st day of April, 1950.

[Seal] /s/ CLARA H. COOPER,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 10, 1953. [19212]

In the District Court of the United States
In and for the Southern District of California
Central Division

Civil Action No. 5421 P.H.

(and consolidated, related and enjoined actions No.
5678 P.H. in said Southern District, No. 7989,
W.M. in said Southern District, No. 28203-G
in the Northern District, and No. 14492 in the
Superior Court of California)

MALLONEE, et al.,

Plaintiffs,

vs.

FAHEY, et al.,

Defendants.

FEDERAL HOME LOAN BANK OF LOS AN-
GELES, et al.,

Plaintiffs,

vs.

FEDERAL HOME LOAN BANK OF PORT-
LAND, et al., also sometimes known and re-
ferred to as the Federal Home Loan Bank of
San Francisco, et al.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER FOR SUBSTITUTION
OF PARTIES PLAINTIFF

The Plaintiffs, Flora E. Mallonee, Mabel E.
Fergus and Winnie Bucklin, the presently consti-

tuted Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, in the above-entitled class action, having filed on March 14, 1950, their Motion for Substitution of Parties Plaintiff, with supporting affidavits and points and authorities, and Notice of the time and place of hearing thereof, having been duly served upon counsel of record for all interested parties, and there having been no written [19216] objection filed to said motion, excepting only the opposition, filed by the defendants the Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, the Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann, and George K. Bramley, which opposition was joined in by the defendant Federal Home Loan Bank of San Francisco, and no others, the said Motion for Substitution of Parties Plaintiff, came on regularly for hearing in courtroom No. 1 in the Post Office and Federal Building at Los Angeles, on Monday, March 27, 1950, at the hour of 10 o'clock a.m., and there then and there appearing—

1. Wyckoff Westover, Esquire, of the firm of Westover & Smith, representing the plaintiffs, Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, and

2. Paul Fitting, Assistant United States Attorney, on behalf of Ernest A. Tolin, United States Attorney, and William H. McKenna, Esquire, Assistant Counsel for the Home Loan Bank Board,

representing the defendants, the Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, the Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Amman and George K. Bramley, and

3. Irving G. Bishop, Esquire, on behalf of Verne Dusenbery, Philip A. Angell, Irving G. Bishop and Sylvester Hoffmann, Esquires, attorneys representing the defendant Federal Home Loan Bank of San Francisco, and

4. Charles K. Chapman, Esquire, representing the cross-complainant Long Beach Federal Savings and Loan Association;

And there having been presented no affidavits or oral or documentary evidence other than that submitted by the plaintiffs, and the matter having been argued and submitted, and the court being fully advised in the premises, Now Finds: [19217]

Findings of Fact

1. That the plaintiffs herein Flora E. Mallonee, Mabel Fergus and Willie Bucklin, are the presently duly and regularly licensed Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, (License No. 80282 LA, Receipt No. LA 69192, renewed January 1, 1950, issued pursuant to Chapter 385 of the Statutes of 1949 of the State of California, Department of Investment, Division of Corporations), and

2. That Notice of the hearing of said Motion for

Substitution of parties plaintiff, was duly and regularly given.

3. That this Court has heretofore after extended hearings, by various orders, held that it has jurisdiction of the parties and subject matter of the within litigation, from certain of which orders appeals were taken by the Home Loan Bank Board and/or its agents, and thereafter dismissed, and upon which order, as well as said other orders so holding, the time to appeal has passed for a considerable period.

4. That the above-entitled class action was instituted on May 27, 1946, by Paul L. Mallonee, Winnie Bucklin, and C. H. Newhouse, for and on behalf of the shareholder members of the Long Beach Federal Savings and Loan Association, and

5. That said Paul L. Mallonee, Winnie Bucklin, and C. H. Newhouse were then a duly constituted Shareholder Members Protective Committee, and became duly licensed by the Department of Investment of the State of California, Division of Corporations, License No. 80282 LA.

6. That on May 19, 1948, C. H. Newhouse passed away in the City of Long Beach, County of Los Angeles, State of California.

7. That thereafter Mabel E. Fergus was duly substituted in the place and stead of C. H. Newhouse, deceased, to be a member of said Shareholder Members Protective Committee.

8. That on June 3, 1949, Paul L. Mallonee passed away in the City of Long Beach, County of Los Angeles, State of California. [19218]

9. That thereafter his widow, Flora E. Mallonee, was duly and regularly substituted in the place and stead of her husband, said Paul L. Mallonee, deceased, to be a member of said Shareholder Members Protective Committee.

10. That at all times since the commencement of this class action, the Shareholder Members Protective Committee has been duly and regularly constituted and has been the real plaintiff in the above-entitled class action.

Conclusions of Law

From the foregoing Findings of Fact the court now makes and renders its Conclusions of Law, that:

1. The above-entitled class action did not abate by the death of said C. H. Newhouse, nor by the death of said Paul L. Mallonee, nor at all, but survives and continues as a class action for and on behalf of all of the shareholder members of the Long Beach Federal Savings and Loan Association, and as to all other issues and matters raised by the pleadings of the various parties.

2. That the motion for the substitution of Mabel E. Fergus in the place and stead of C. H. Newhouse, deceased, and for the substitution of Flora E. Mallonee in place and stead of Paul L. Mallonee, deceased, should be granted.

Judgment

Wherefore, It Is Hereby Ordered, Adjudged and Decreed that the Motion of the plaintiffs Flora E. Mallonee, Mabel E. Fergus, and Winnie Bucklin, the presently constituted Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, to be substituted as plaintiffs in the above-entitled action be and is hereby granted, and the said

1. Mabel E. Fergus is substituted in place and stead of C. H. Newhouse, deceased, to be a plaintiff in the above-entitled class action, and [19219]

2. Flora E. Mallonee is substituted in place and stead of Paul L. Mallonee, deceased, to be a plaintiff in the above-entitled class action.

3. This Order of Substitution of parties plaintiffs is a final judgment and the court expressly determines that there is no just reason for delay and expressly directs and orders the forthwith entry of this judgment of substitution of parties plaintiff.

Dated at Los Angeles, this 5th day of April, 1950.

/s/ PEIRSON M. HALL,

Judge of the United States
District Court.

Judgment entered Apr. 5, 1950.

Docketed Apr. 5, 1950.

[Endorsed]: Filed April 5, 1950. [19220]

United States District Court, Southern District
of California, Central Division

NOTICE BY CLERK OF ENTRY OF
JUDGMENT

Ernest T. Tolin, U. S. Atty.,
Paul Fitting, Asst. U. S. Atty.,
William F. McKenna, Esq.,
600 Federal Building,
Los Angeles 12, Calif.

Westover & Smith, Esqs.,
215 West Sixth Street,
Los Angeles 14, Calif.

Charles E. Chapman, Esq.,
Ocean Center Building,
Long Beach 2, Calif.

Bishop & Hoffmann, Esqs.,
Philip H. Angell, Esq.,
Verne Dusenbery, Esq.,
215 West Fifth Street,
Los Angeles 13, Calif.

Re: Mallonee, et al., v. Fahey, et al., No. 5421-P.H.;
Fed. Home Loan Bank of Los Angeles v. Fed.
Home Loan Bank of Portland, No. 5678-P.H.;
Newendorp, et al., v. Gregory, et al., No.
7989-P.H.

You are hereby notified that Findings of Fact,
Conclusions of Law and Order Substituting Parties

Plaintiff, has been entered this day in the above-entitled case, in Judgment Book No. 65, page 99.

Dated: Los Angeles, California, April 5, 1950.

EDMUND L. SMITH,
Clerk,

By C. A. SIMMONS,
Deputy Clerk.

Mailed April 6, 1950. [19223]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF AFFIDAVIT OF RICHARD FITZPATRICK COUNTERING AFFIDAVIT OF A. V. AMMANN IN OPPOSITION TO MOTION AND PETITION OF PLAINTIFF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WILMINGTON FOR ALLOWANCE OF ATTORNEY'S FEES AND COSTS IN CLASS ACTION

State of California,
County of Los Angeles—ss.

Bernice H. Stoakes, being first duly sworn, deposes and says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 939 Rowan [19224]

Building, Los Angeles 13, California; that on the 30th day of March, 1950, affiant served copies of Affidavit of Richard Fitzpatrick Countering Affidavit of A. V. Ammann in Opposition to Motion and Petition of Plaintiff, First Federal Savings and Loan Association of Wilmington, for Allowance of Attorney's Fees and Costs in Class Action on counsel of record for certain of the parties to the above-entitled consolidated actions at the addresses as set forth as follows:

Ernest A. Tolin, United States Attorney, 600 Federal Building, Los Angeles, California;

William S. McKenna, Esq., 101 Indiana N.W., Washington, D. C.;

Richard Fitzpatrick, 756 South Broadway, Los Angeles 14, California;

O'Melveny & Myers, 433 South Spring Street, Los Angeles 13, California;

Messrs. Bishop and Hoffmann, 810 Chester Williams Building, Los Angeles 13, California;

F. Henry NeCasek, Esq., 3233 East Anaheim Street, Long Beach 4, California;

Albert A. Rosenshine, Esq., and James E. Burns, Esq., 111 Sutter Street, San Francisco 4, California;

Charles Dal Sooy, Esq., 220 Montgomery Street, San Francisco 4, California;

Messrs. Linnell & Smith, 401 Jergins Trust Building, Long Beach 2, California;

McIntyre Faries, Esq., 812 Subway Terminal Building, Los Angeles 13, California;

Thomas F. Menzies, Esq., Rowan Building, Los Angeles 13, California;

Messrs. Westover and Smith, 1009 Pacific Southwest Building, Los Angeles 14, California; [19225]

Charles K. Chapman, Esq., Ocean Center Building, Long Beach 2, California;

Lyman B. Sutter, Esq., 512 Jergins Trust Building, Long Beach 2, California;

Raymond Tremaine, Esq., 1007 Van Nuys Building, Los Angeles 14, California;

by placing a true copy thereof in an envelope addressed to each of said names and addresses as listed herein, and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for First Federal Savings and Loan Association of Wilmington by and for whom said service was made.

Affiant further alleges that there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

/s/ BERNICE H. STOAKES.

Subscribed and sworn to before me this 6th day of April, 1950.

[Seal] /s/ ROSE SCHINDELMAN,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed April 7, 1950. [19226]

[Title of District Court and Cause.]

AFFIDAVIT OF PAUL FUSSELL SUPPLEMENTING HIS AFFIDAVIT FILED IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND SUPPLEMENT THERETO

State of California,
County of Los Angeles—ss.

Paul Fussell, being first duly sworn, deposes and says:

He is, and was at all times herein mentioned a partner of O'Melveny & Myers and one of the attorneys for the Federal Home Loan Bank of Los Angeles and for the five of the six association plaintiffs in Action No. 5678-P.H. represented by Richard FitzPatrick and O'Melveny & Myers.

This affidavit is supplemental to affiant's affidavit in support of the motion of plaintiffs in said Action No. 5678-P.H. for order directing payment of attorneys' fees on account filed herein on January 6, 1949, and the supplement thereto filed herein on July 8, 1949.

Affiant has reviewed the time records kept by O'Melveny & Myers relating to the above-entitled consolidated actions to determine the amount of time spent by affiant and other attorneys of O'Melveny & Myers in services which might be considered to [19228] have been rendered to the Federal Home Loan Bank Stockholders Committee, sometimes

called the FHLB Committee, or the FHLB Committee of the California Savings and Loan League.

After such review, affiant states that no time was spent on said services by attorneys connected with O'Melveny & Myers, during the period from March 29, 1946 to June 30, 1949, both dates inclusive (the period covered by said motion and said supplement thereto), except not to exceed 31 hours of affiant's time and not to exceed 30½ hours for Roy B. Woolsey, an attorney then employed by O'Melveny & Myers.

Said services were rendered in collaboration with Richard FitzPatrick, Esq., and consisted of preparing an application to the California Commissioner of Corporations for a license to said Federal Home Loan Bank Stockholders Committee; research on and preparation of an opinion that members of the Federal Home Loan Bank of Los Angeles might lawfully make contributions to said Committee; attendance at Committee meetings; preparation or examination of Committee reports to members of the Federal Home Loan Bank of Los Angeles and to others; and communications to and from Committee members relating to Committee matters. Of the matters mentioned in this paragraph, research was done by said Roy B. Woolsey and the other services were performed by affiant.

The object and purpose of said Committee members, and of said five association plaintiffs, was at all said times and is the restoration of the Federal Home Loan Bank of Los Angeles and the twelfth Federal Home Loan Bank District, and all ser-

vices rendered by affiant and other attorneys connected with O'Melveny & Myers, as set forth in the affidavits filed in support of said [19229] motion and said supplemental motion, were rendered by them in furtherance of said object and purpose.

Affiant further states, with reference to the participation in the pending motion of said five member associations who are plaintiffs in Action 5678-P.H., that all services rendered for and on behalf of Federal Home Loan Bank of Los Angeles by attorneys connected with O'Melveny & Myers also inured to the benefit of said member associations; that there is no reason for an apportionment of fees as between said Federal Home Loan Bank of Los Angeles and said associations in that an award to said Federal Home Loan Bank of Los Angeles would constitute an adequate compensation for all services rendered for the common benefit of said Federal Home Loan Bank of Los Angeles and said member associations and would eliminate the possibility of a duplication of fees for the same services; and that no services were rendered for said member associations other than those rendered for and on behalf of said Federal Home Loan Bank of Los Angeles as aforesaid.

Affiant also states that it will be necessary for Richard FitzPatrick and O'Melveny & Myers to render further services in the above-entitled actions in connection with preparation for trial, trial, an appeal now pending, and other proceedings in connection with the prosecution of said causes; and

that said Federal Home Loan Bank of Los Angeles is without funds to compensate its counsel for the rendition of such services.

/s/ PAUL FUSSELL.

Subscribed and sworn to before me this 6th day of April, 1950.

[Seal] /s/ CARRIE VAUGHN,
Notary Public in and
For said County and State.

[Endorsed]: Filed April 7, 1950. [19230]

[Title of District Court and Cause.]

AFFIDAVIT OF RICHARD FITZPATRICK
SUPPLEMENTING HIS AFFIDAVITS
FILED IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND SUPPLEMENT
THERE TO

State of California
County of Los Angeles—ss.

Richard Fitzpatrick, being first duly sworn, deposes and says:

He is one of the attorneys for the Federal Home Loan Bank of Los Angeles and is one of the attorneys for five of the six association plaintiffs in Action No. 5678-P.H.

This affidavit is supplemental to his affidavits in

support of the motion of said plaintiffs in Action No. 5678-P.H. [19232] for order directing payment of attorneys' fees on account filed herein January 6, 1949, and the supplement thereto filed herein on July 8, 1949.

Affiant has reviewed his records, papers, files and time sheets relating to the above-entitled consolidated actions to determine the amount of time spent by affiant in services which might be considered to have been rendered to the Federal Home Loan Bank Stockholders Committee, sometimes called the FHLB Committee, or the FHLB Committee of the California Savings and Loan League.

After such review, affiant states that the time spent by him in rendering said services does not exceed 150 hours during the period from March 29, 1946 to June 30, 1949, both dates inclusive, the period covered by his said affidavits filed in support of said motion. 150 hours is 7.3% of the 2056.3 hours shown in said affidavits to have been spent by affiant in rendering the services set forth in said affidavits.

A statement of the general nature of said services is as follows: collaboration with Paul Fussell, Esq., in the preparation of an application to the Commissioner of Corporations of the State of California for the issuance of a license to said Federal Home Loan Bank Stockholders Committee; collaboration with Mr. Fussell in the preparation of an opinion that members of the Federal Home Loan Bank of Los Angeles might lawfully make contributions to said Committee; the attendance at Com-

mittee meetings; the preparation of minutes of such meetings; the preparation of Committee reports to the members of the Federal Home Loan Bank of Los Angeles and to others; and correspondence with and telephone calls to and from the Committee members relating to Committee matters.

The object and purpose of said Committee members was and is the restoration of the Federal Home Loan Bank of Los [19233] Angeles and the Twelfth Federal Home Loan Bank District and all services rendered by affiant, as set forth in his said affidavits filed in support of said motion for order directing payment of attorneys' fees, were rendered by him in furtherance of the attainment of said object and purpose.

Affiant further states with reference to the participation in the pending motion of the five association plaintiffs in Action No. 5678-P.H. represented by affiant and O'Melveny & Myers, all that services rendered by him for and on behalf of said Home Loan Bank of Los Angeles also inured to the benefit of the said member associations; that there is no reason for an apportionment of fees as between said Los Angeles Bank and said associations in that an award to said Bank would constitute an adequate compensation for all services rendered for the common benefit of said Bank and said member associations and would eliminate the possibility of a duplication of fees for the rendition of the same services; that no services were rendered for said member associations other than those rendered for

and on behalf of said Los Angeles Bank as aforesaid.

Affiant also states that it will be necessary to render further services in the above-entitled consolidated actions in connection with trial, preparation for trial, and the appeal from this Court's order of preliminary injunction now pending and other proceedings in connection with the prosecution of said causes; and that said Los Angeles Bank is without funds to compensate its counsel for the rendition of such services.

/s/ RICHARD FITZPATRICK.

Subscribed and sworn to before me this 6th day of April, 1950.

[Seal] /s/ J. SCOTT WELLER,
Notary Public in and
For said County and State.

Receipt of Copy Acknowledged.

[Endorsed]: Filed April 7, 1950. [19234]

At a stated term, to-wit: The February Term. A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of April in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable: Peirson M. Hall, District Judge.

[Title of Cause.]

For hearing on (1) motion of plaintiff Federal Home Loan Bank of Los Angeles for order directing payment of attorney fees on account filed Jan. 6, 1949, and supplement filed July 8, 1949; (2) motion of First Federal Savings & Loan Assoc. of Wilmington for order directing payment of attorney fees on account, filed Feb. 10, 1950; (3) motion of plaintiff (5678) and defendant, third-party defendant, cross-claimant and cross-defendant (5421) Federal Home Loan Bank of Los Angeles, for order directing repayment of moneys heretofore advanced by Shareholders Protective Committee, filed Jan. 6, 1949, and supplement filed July 8, 1949; (4) motion of plaintiffs, et al., for order requiring and ordering certain defendants, cross-defendants and third-party defendants to appear and testify, pursuant to notice filed March 28, 1950; and (5) motion of defendants and cross-defendant Federal Home Loan Bank of San Francisco to dismiss the "Motion for order of court re-

quiring defendants and cross-defendants Home Loan Bank Board, et al., to appear and testify" or to strike it and all supporting papers filed in connection therewith, from the files, pursuant to notice filed April 5, 1950;

Wyckoff Westover, Esq., appearing as counsel for plaintiffs and Shareholders Protective Committee; W. I. Gilbert, Jr., Esq., appearing as counsel for First Federal Savings & Loan Assoc., Wilmington; Chas. K. Chapman, Esq., appearing as counsel for defendant Long Beach Federal Savings & Loan Assoc.; Lyman B. Sutter, Esq., [19240] appearing as counsel for Title Service Co.; Raymond Tremaine, Esq., appearing as counsel for defendant Robert H. Wallis; Richard Fitzpatrick, Pierce Works, John Whyte, and Paul Fussell, Esqs., appearing as counsel for Federal Home Loan Bank of Los Angeles; Irving Bishop, Verne Dusenbery, and Phillip N. Angell, Esqs., appearing as counsel for defendants Federal Home Loan Bank of San Francisco; Paul Fitting, Ass't U. S. Att'y, and Wm. F. McKenna, Esq., of general counsel, appearing as counsel for Federal Home Loan Bank Board, John H. Fahey, and A. V. Ammann;

Filed affidavit, and service of affidavit of R. Fitzpatrick in opposition to affidavit of A. V. Ammann.

Pursuant to stipulation it is ordered that Item 3 be stricken from the calendar, to be re-set on notice.

Court hears statements of the parties re Items 4 from the calendar, to be re-set on notice.

and 5, respectively, and orders said items stricken

Affidavits of Paul Fussell and Richard Fitzpatrick, respectively, in re attorney fees, are filed.

Exhibit 2-27-50-19 for Long Beach Federal Savings & Loan Assoc. is marked for ident. and admitted in evidence.

Frank Noon, heretofore sworn, is called and testifies.

At 5 P.M. court recesses. At 7 P.M. court reconvenes herein and all being present as before, including counsel for both sides;

Exhibits 2-27-50-20 to 57 of Long Beach Federal Savings & Loan Assoc., and Exhibits 2-27-50-F and G of Federal Home Loan Bank of San Francisco, respectively, are marked for ident. and admitted in evidence.

At 11:30 P.M. Court declares a recess in these proceedings to 10 A.M., April 8, 1950. [19241]

[Title of District Court and Cause.]

LILLIAN A. COGGSWELL,
Appellant for Intervention.

NOTICE OF MOTION FOR LEAVE TO INTERVENE

To the Plaintiffs, and their attorneys, Westover and Smith;

To Long Beach Federal Savings and Loan Association, Third Party plaintiff and cross-claimant, and Charles K. Chapman, Esq., its [19508] attorney;

To Title Service Company, defendant and cross-claimant in interpleader, and Lyman B. Sutter, Esq., its attorney;

To Robert H. Wallis, defendant and cross-claimant in interpleader, and Raymond Tremaine, Esq., his attorney;

To First Federal Savings and Loan Association of Wilmington, and W. I. Gilbert, Jr., Esq., its attorney;

To Federal Home Loan Bank of Los Angeles, defendant, third-party defendant and cross-claimant, and O'Melveny and Myers and Richard Fitzpatrick, Esq., its attorneys;

To Federal Home Loan Bank of San Francisco, also sometimes known and referred to as Federal Home Loan Bank of Portland, defendant and third-party defendant and to Sylvester Hoffman and Irving G. Bishop, Verne Dusenbery and Philip H. Angell, its attorneys;

To Ben A. Perham, Fred J. Bradshaw, William A. Davis, M. L. Carrier, I. W. Dinsmore, Douglas H. Driggs, R. G. Fremou, L. H. Hoffman, Guy E. Jaques, C. W. Leaphart, L. C. Wetzels, Gerritt Vander Ende, Paul Bartling, W. D. Hopping, J. W. Maxwell, W. O. McCaw, Worth D. Wright, Frank R. Johnson, Irving Bogardus, R. Floyd Hewitt, J. H. Andrews, C. N. Bloomfield, and P. C. Bulen, defendants and cross-defendant, and Irving G. Bishop, Sylvester Hoffman, Verne Dusenbery and Philip H. Angell, their attorneys;

To Roy E. Hegg, defendant and cross-claimant and F. Henry Necasek, his attorney;

To Pioneer Investors Savings and Loan Association, a corporation, Home Mutual Savings and Loan Association, a corporation, California Savings and

Loan Company, a corporation, Thrift Federal Saving and Loan Association, a corporation, San Francisco Federal Savings and Loan Association, a corporation, Community Savings and Loan Association, a corporation, Oakland Federal Savings and Loan Association, a corporation, Citizens' Federal Savings and Loan Association, a corporation, Berkeley [19509] Guarantee Savings and Loan Association, a corporation, and Golden West Savings and Loan Association, a corporation, defendants and cross-defendants, and all the officers and directors respectively, thereof, and Albert A. Rosenshine, James E. Burns, and Charles Dal Sooy, their attorneys;

To Home Loan Bank Board, an entity, William K. Divers, Chairman, J. Alston Adams, member, and O. K. La Roque, member, John H. Fahey, individually and as Chairman of the Federal Home Loan Bank Board, A. V. Ammann, individually, and George K. Bramley, individually, and Federal Savings and Loan Insurance Corporation, defendant and cross-defendant, and Ernest A. Tolin, U. S. Attorney, and Paul Fitting, Assistant U. S. Attorney, their attorneys:

You Will Please take Notice that on Monday, the first day of May, 1950, at 10:00 o'clock a.m., of said day or as soon thereafter as Counsel can be heard, Lillian A. Coggsell, by her counsel, will move the Court for an Order allowing the filing of the accompanying Complaint in Intervention.

Said Motion will be made and based upon this notice and the accompanying Motion for Leave to

Intervene, Complaint in Intervention and Affidavit in Support thereof; a copy of each of said documents is served herewith.

Dated this 12th day of April, 1950.

/s/ FRANK G. MAKEPEACE,
Attorney for Intervenor.

[Endorsed]: Filed April 13, 1950. [19510]

[Title of District Court and Cause.]

LILLIAN A. COGGSWELL,
Applicant for Intervention,

MOTION FOR LEAVE TO INTERVENE

To the Honorable, the District Court of the United States, in and for the Southern District of California, Central Division.

Comes Now, the above-named applicant for intervention, and moves the Court for leave to intervene in the above-entitled action. Said motion is based upon the following grounds: [19511]

I.

That she is the purchaser and assignee of a promissory note and deed of trust upon a parcel of real property described in the proposed complaint in intervention, a copy of which proposed complaint in intervention is attached hereto as Exhibit A and incorporated herein by reference.

That defendant Long Beach Federal Savings and

Loan Association was the beneficiary under that certain deed of trust dated the first day of October, 1943, and recorded October 11, 1943, in Book 20322, Page 207 of Official Records, County of Los Angeles, California, securing a promissory note of even date in the amount of Twelve Hundred (\$1200.00) Dollars, payable in accordance with the terms thereof, which said note has an unpaid balance of Six Hundred Thirty-One and 78/100ths (\$631.78) as of April 4, 1946.

That she is the assignee of said note and deed of trust, by virtue of an instrument of assignment, executed on October 11, 1946, by A. V. Ammann as Conservator of Long Beach Federal Savings and Loan Association. Said instrument was acknowledged by said Ammann on October 11, 1946, and was recorded on October 15, 1946, in Book 23641, at Page 121 of Official Records of the County Recorder of Los Angeles County, State of California.

That defendant, Title Service Company, a corporation, is the trustee under said deed of trust.

II.

That applicant for intervention desires the authorization and Order of this Court directing the said defendant, Title Service Company as trustee under said deed of trust, to proceed with the sale of said property in accordance with the power of sale provision contained in said deed of trust.

III.

That because of litigation arising over the seiz-

ure [19512] and possession of said Long Beach Federal Savings and Loan Association, the said trustee, Title Service Company is unwilling to conduct the sale of said property secured by said deed of trust, unless authorized so to do by this Court, and as a result thereof, the Title to said property is in jeopardy and intervenor is in danger of suffering irreparable loss.

IV.

That the sale of said property, if authorized by this Court, could be made without prejudice to the rights of litigants in this action in such manner as not to, in any way, affect the issues involved in this pending litigation.

V.

That applicant for intervention has the right to intervene under Rule 24 (a) of the Federal Rules of Civil Procedure on the ground that she is so situated as to be adversely affected by a distribution or other disposition of property in the custody of or subject to the control or disposition of this Court or an Officer thereof.

Wherefore, Applicant respectfully prays:

1. That this Court make its Order granting her leave to file the proposed complaint in intervention in the above-entitled action;

2. That this Court issue an Order to show cause why the relief in said proposed complaint in intervention should not be granted;

3. That she have such other and further relief as to this Court may seem just.

Dated March 31, 1950.

/s/ FRANK G. MAKEPEACE,
Attorney for Applicant
For Intervention.

[Endorsed]: Filed April 13, 1950. [19513]

[Title of District Court and Cause.]

LILLIAN A. COGGSWELL,
Plaintiff in Intervention.

COMPLAINT IN INTERVENTION

Comes Now the above named intervenor and files her Complaint in Intervention in the above-entitled cause and alleges:

I.

That Intervenor is so situated as to be adversely affected by distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court or [19514] an officer thereof.

II.

That defendant Long Beach Federal Savings and Loan Association, an association, organized and existing under and by virtue of the laws of the United States of America, was the named beneficiary under that certain deed of trust dated the 1st day of October, 1943, and recorded October 11,

1943, in Book 20322, Page 207, of Official Records, County of Los Angeles, California, securing a certain promissory note of even date in the face amount of Twelve Hundred (\$1200.00) Dollars. Said note and deed of trust were executed by Frank E. Russell as maker and trustor, and assumed, in writing, by L. E. McCleary. Said note has an unpaid balance of Six Hundred Thirty-one and 78/100th (\$631.78) Dollars.

That on or about October 11, 1946, defendant A. V. Ammann, representing himself as Conservator of the Long Beach Federal Savings and Loan Association, the named beneficiary under said deed of trust, granted, assigned and transferred to Lillian A. Coggsell, intervenor herein, all beneficial interest of said association under said deed of trust together with the note for which said deed of trust was security, the money due and to become due on said note with interest, and all rights accrued or to accrue under said deed of trust.

That defendant Title Service Company, a corporation, is the trustee under said deed of trust.

III.

That said deed of trust conveyed the legal title and ownership of the hereinafter described real property to the said trustee therein named, defendant, Title Service Company, upon the terms and conditions contained in said deed of trust. The property so described is as follows:

Lots 45 and 46 of Signal Park Tract, No. 2,
in the City of Long Beach, County of Los

Angeles, [19515] California, State of California, as per map recorded in Book 10, Page 109 of Maps, in the office of the County Recorder of said County.

That L. E. McCleary is the record owner of said real property subject to the said deed of trust.

IV.

That under the terms of said note monthly installments of Twenty-five (\$25.00) Dollars including principal and interest at the rate of six per cent (6%) per annum, were to be made on the first day of each month; that no payments have been made since April 4, 1946. That there is a principal balance of Six Hundred Thirty-one and 78/100ths (\$631.78) Dollars which is due, owing and unpaid, as of April 4, 1946. That interest thereon to April 1, 1950, amounts to the sum of That the combined amount of said principal and interest is..... That L. E. McCleary, as assuming trustor, has made no payments of either principal or interest since April 4, 1946, and has been since said date, and is now, in default thereof.

V.

That intervenor has the right to receive the balance of the principal due under said note, plus interest, or in lieu thereof, she has the right to foreclose said deed of trust and to direct said trustee to exercise the power of sale contained in said deed of trust because of said defaults thereunder.

VI.

That on or about May 20, 1946, defendant, A. V. Ammann, assumed the office of conservator of the Long Beach Federal Savings and Loan Association, and thereafter a controversy arose between the said conservator and Long Beach Federal Savings and Loan Association, and various other parties to these actions as to the authority of said conservator to transfer, assign, or otherwise deal with deeds of trust outstanding in the name of Long [19516] Beach Federal Savings and Loan Association and all other assets of said association; that because of the various contentions and allegations of the parties to these actions, title insurance companies are unwilling to insure the validity of intervenor's ownership or title to said note and deed of trust, and the trustee, defendant Title Service Company, declines to invoke the power of sale provision in said deed of trust, and foreclose the same, unless ordered and directed so to do by this Court. That apparently various prior orders of the Court freeing the titles of other customers of said Long Beach Association did not contain descriptions of, or reference to, the said note and trust deed herein described and owned by intervenor.

VII.

That the sale of said property under the power of sale provision in said deed of trust, if authorized by this Court, could be made without prejudice to the rights of litigants in this action and in such manner as not to, in any way, affect the issues involved in this litigation.

VIII.

That by reason of the fact that said power of sale provision cannot be exercised, intervenor is suffering great and irreparable and continuing loss; that intervenor has a right to intervene under Rule 24(a) of the Federal Rules of Civil Procedure on the ground that she is so situated as to be adversely affected by distribution or other disposition of property which is in the custody or subject to the control or disposition of this Court or an officer thereof.

IX.

That the only way in which intervenor can prevent her irreparable and continuing loss, and secure a complete and effective remedy is to be permitted by this Honorable Court to intervene in the above-entitled proceeding for the purpose of [19517] obtaining an order of this Court directing the said trustee under said deed of trust to exercise the power of sale contained therein.

X.

That intervenor is in danger of being barred by the running of the Statute of Limitations on said note and deed of trust. That this Honorable Court has the custody of said hereinabove described real property or said property is subject to the control or distribution of this court and therefore it is the only court with power to grant the relief sought by intervenor herein.

XI.

That unless relief be granted by this Honorable Court, intervenor will suffer grave and irreparable

damage and will be unable to satisfy the obligation due her under said note and deed of trust and that such damage will continue to mount and increase during whatever period of time must elapse before the final determination of said litigation among the parties in the above-entitled proceeding.

Wherefore, intervenor prays that she have judgment as follows:

1. That this Court direct the trustee, Title Service Company, of the trust deed hereinabove described to exercise the power of sale contained in said deed of trust.

2. That in aid hereof the Court issue an order directed to the parties in interest requiring them to perform hereunder.

3. That this intervenor have such other and further relief as to the Court may seem proper.

/s/ FRANK G. MAKEPEACE,
Atty. for Intervenor Lillian
A. Coggsowell. [19518]

State of California,
County of Los Angeles—ss.

Lillian A. Coggsowell being by me first duly sworn, deposes and says: that she is the Internor in the above-entitled action; that she has read the foregoing Complaint in Intervention and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are

therein stated upon her information or belief, and as to those matters she believes it to be true.

/s/ LILLIAN A. COGGSWELL.

Subscribed and sworn to before me this 31st day of March, 1950.

[Seal] /s/ FRANK G. MAKEPEACE,
Notary Public in and for Said County and State of
California.

Lodged April 13, 1950.

[Endorsed]: Filed June 5, 1950.

[Title of District Court and Cause.]

LILLIAN A. COGGSWELL,
Applicant for Intervention.

AFFIDAVIT IN SUPPORT OF MOTION TO
INTERVENE

State of California,
County of Los Angeles—ss.

Lillian A. Coggsowell, being first duly sworn, deposes and says:

That she is the Applicant for intervention in the [19520] above-entitled action; that she is the purchaser and assignee of a note and deed of trust upon the following described real property:

Lots 45 and 46 of Signal Park Tract; No. 2,
in the City of Long Beach, County of Los

Angeles, State of California, as per Map recorded in Book 10, Page 109 of Maps in the Office of the County Recorder of said County.

That defendant, Long Beach Federal Savings and Loan Association was the original beneficiary under that certain deed of trust executed by Frank E. Russell dated October 1, 1943, and recorded October 11, 1943, in Book 20322, Page 207 of Official Records, County of Los Angeles, California, securing a certain promissory note of even date executed in the face amount of Twelve Hundred (\$1200.00) Dollars and assumed by L. E. McCleary, upon which note there is an unpaid balance of Six Hundred Thirty-one Dollars and Seventy-eight (\$631.78) as of April 4, 1946.

That for a valid and adequate consideration paid by Intervenor to defendant, A. V. Ammann, the said Ammann caused an instrument of assignment to be executed in his name as Conservator for the defendant, Long Beach Federal Savings and Loan Association on the 11th day of October, 1946, in favor of Applicant as assignee and transferee thereof. That defendant, Title Service Company, a corporation, is the trustee under said deed of trust.

That the above-described real property is security for the payment of said trust deed note.

That Applicant desires and has the right under Rule 24(a) of the Federal Rules of Civil Procedure to intervene in this action because she is so situated as to be adversely affected by a distribution or other disposition of said property which is in the custody or subject to the control or disposition of this Court.

That because of the litigation in the above-entitled actions now pending in this Court arising over the seizure and [19521] return of possession of the said Long Beach Federal Savings and Loan Association, Applicant is unable to perfect her rights under said deed of trust and as a result thereof her rights are in jeopardy and she will suffer irreparable loss.

That this Court's Order allowing such intervention and the protection of Applicant's rights will in no way prejudice the rights of the litigants in this action nor will it in any way affect the issues involved in the pending litigation among the parties.

/s/ LILLIAN A. COGGSWELL,
Applicant for Intervention.

Subscribed and sworn to before me this 31st day of March, 1950.

[Seal] /s/ FRANK G. MAKEPEACE,
Notary Public in and
For Said County and State.

[Endorsed]: Filed April 13, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING OF CROSS-INTERROGATORIES

Upon Reading the Application of the Plaintiffs (5421-P.H.) Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association, the cross-claimant and third-party

plaintiff Long Beach Federal Savings and Loan Association, the cross-claimant in interpleader, Robert H. Wallis, the cross-claimant in interpleader, Title Service Company, the plaintiff (5678-P.H.) and cross-claimant (5678-P.H.) Federal Home Loan Bank of Los Angeles, et al., and the plaintiff (5678-P.H.) First Federal Savings and Loan Association of Wilmington, for extension of time for the filing of [19534] proposed cross-interrogatories to be propounded to defendant John H. Fahey, and it appearing that the parties in preparation of their cross-interrogatories may desire to incorporate therein, documents or copies thereof, obtained by the parties through the inspection of the books, records and documents of said defendant and cross-defendant San Francisco Bank, which said inspection of said books, records and documents has been previously ordered by this Court, but has not yet been completed, and is now being conducted under the supervision of the Special Master of this Court, and, Good Cause Appearing Therefor,

It Is Hereby Ordered, that the time for the filing by any party of proposed cross-interrogatories to be propounded to the defendant John H. Fahey, upon the direct interrogatories heretofore submitted, be and the same is hereby extended until 30 days after the approval by this Court of the report of the Special Master of this Court that the inspection of said books, records and documents of the defendant, Federal Home Loan Bank of San Francisco has been completed, or until further order of the Court fixing a day certain, upon motion.

It Is Further Ordered, that the time of settlement of said proposed interrogatories and to be proposed cross-interrogatories is hereby extended to a time to be fixed hereafter by the Court.

Dated this 14th day of April, 1950.

/s/ PEIRSON M. HALL,
Judge of the United States
District Court.

[Endorsed]: Filed April 14, 1950. [19535]

At a stated term, to wit: The February Term. A. D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 14th day of April in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Peirson M. Hall,
District Judge

[Title of Cause.]

Wyckoff Westover, Esq., appearing as counsel for plaintiffs and Shareholders' Protective Committee, now comes before the Court and files application for extension of time for filing proposed cross-interrogatories for F. H. Fahey.

W. I. Gilbert, Jr., Esq., is present as counsel for the First Federal Savings & Loan Assoc. of Wil-

mington; Raymond Tremaine, Esq., is present as counsel for defendant Robert H. Wallis; John Whyte, Esq., is present as counsel for Federal Home Loan Bank of Los Angeles; Irving Bishop, Esq., is present as counsel for defendants Federal Home Loan Bank of San Francisco; Arline Martin, Ass't U. S. Att'y, is present as counsel for Federal Home Loan Bank Board, John H. Fahey, and A. V. Ammann; and Ronald Walker, Special Master, being present;

It is ordered that the order made on March 31, 1950, setting this cause for hearing on April 15, 1950, re settlement of interrogatories and cross-interrogatories for John H. Fahey is vacated, and Court now orders the said matter continued until thirty days after approval by the Special Master on inspection of books, etc., or until further order of the Court fixing a day certain upon motion.

Written order extending time to file cross-interrogatories is filed. [19536]

[Title of District Court and Cause.]

STATEMENT OF REASONS IN OPPOSITION
TO MOTION OF LILLIAN A. COGGSWELL
FOR LEAVE TO INTERVENE

The Home Loan Bank Board, an agency of the executive branch of the Government of the United States, William K. Divers, Chairman, J. Alston Adams and O. K. LaRoque, Members, of the Home Loan Bank Board, Federal Savings and Loan In-

surance Corporation, a corporate instrumentality of the United States wholly owned by the United States, and John H. Fahey, A. V. Ammann and George K. Bramley, without waiving their objections to the jurisdiction of this Court over their respective persons and their other objections including objections to the jurisdiction and to venue, but specifically reserving and asserting the same, file this Statement of Reasons in Opposition to the Motion of Lillian A. Coggs well for Leave to Intervene. [19563]

The above motion should be denied for the following reasons:

A. This Court lacks jurisdiction in the actions in which Lillian A. Coggs well seeks to intervene in that;

(1) The members of the Home Loan Bank Board are indispensable parties;

(2) The former and present members of the Home Loan Bank Board have not and cannot be duly sued or served because:

(a) they are not residents of California and have never been served in California;

(b) they may not be sued or served as non-resident defendants under 28 U.S.C. 1655, because the suits are not actions to enforce or remove liens, etc., on property located within the State of California, and the relief prayed for cannot be granted save by a decree in personam against them, which is not authorized by 28 U.S.C. 1655;

(c) they cannot be sued or served under 28 U.S.C. 1335 and 2361; because none of the complaints, cross-claims, interpleaders, bills and other pleadings are civil actions of, or in the nature of, interpleader; because none of the present and former members are "claimants" to any of the money or property in controversy, within the meaning of 28 U.S.C. 1335 and 2361; and because the claims, if any, of the present and former members are asserted in their official capacity only, and are thus claims of the United States, which has not consented to be sued thereon;

(d) they have never made a general appearance or otherwise submitted to the jurisdiction of this Court over their persons; [19564]

(3) Neither the alleged Federal Home Loan Bank of Los Angeles nor its shareholders have any justiciable interest sufficient to maintain suit here;

(4) The actions are unconsented suits against the United States;

(5) The actions are collateral attacks on administrative orders;

(6) The matters involved in the administrative orders are within the exclusive, primary jurisdiction of the Board and the parties allegedly aggrieved by said orders have failed to exhaust their administrative remedies;

(7) The Federal Savings and Loan Insurance Corporation has not and cannot be duly sued or served because:

(a) it has never been served in California;

(b) it is not a California Corporation, does not do business in California, and does not maintain in California an agent upon whom service can be made;

(c) it cannot be sued or served as a non-resident defendant under 28 U.S.C. 1655, or under 1335 and 2361, for the reasons specified in (2)(b) and (2)(c) above;

(8) None of the pleadings filed in the cause state any claim upon which any relief can be granted;

(9) The cause of action of the plaintiff-shareholders of the Long Beach Federal Savings and Loan Association fails to meet the requirements of Rule 23(b)(2) of the F.R.C.P.;

B. The motion to intervene is not sufficient because:

(1) The motion and the supporting papers disclose that it is not timely, within the requirement of Rule 24, F.R.C.P.; [19565]

(2) The moving party has an adequate remedy at law by means of a suit to foreclose under Section 725a of the California Code of Civil Procedure in the courts of the State of California;

(3) The property involved is not in the custody or subject to the control or disposition of this Court;

(4) The motion and supporting papers fail to disclose sufficient grounds for intervention;

(5) Intervention would unduly complicate and delay the main proceeding.

ERNEST A. TOLIN,
United States Attorney.

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief of Civil Division.

PAUL FITTING,
Assistant U. S. Attorney,

By /s/ PAUL FITTING,
Attorneys for Defendants, Home Loan Bank Board,
Federal Savings & Loan Ins. Corp., Wm. K.
Divers, J. Alston Adams, O. K. LaRoque, John
H. Fahey, A. V. Ammann and George K.
Bramley.

Joinder

The Federal Home Loan Bank of San Francisco hereby joins in and adopts as its own the foregoing "Statement of Reasons in Opposition to Motion of Lillian A. Cogswell for Leave to Intervene," and the attached "Memorandum of Points and Authorities," the same in all respects as if it had served

and filed the aforesaid Statement and Memorandum on its own behalf.

VERNE DUSENBERY,
PHILIP H. ANGELL,
BISHOP & HOFFMAN,

By /s/ IRVING G. BISHOP,
Counsel for the Federal Home Loan Bank of San
Francisco.

[Endorsed]: Filed April 26, 1950. [19566]

[Title of District Court and Cause.]

ORDER STAYING PAYMENT OF ATTOR-
NEYS' FEES AND FIXING AMOUNT OF
SUPERSEDEAS BOND

Upon the motion of defendant, cross-defendant and third party defendant Federal Home Loan Bank of San Francisco, and good cause therefor appearing;

It Is Hereby Ordered that the payment of attorneys' fees to Messrs. O'Melveny & Myers and Richard Fitzpatrick, Esq. and to W. I. Gilbert, Jr. Esq., or any of them, from the funds, assets or securities deposited in the Registry of this Court pursuant to the "Order Requiring Deposit of Certain Notes, Deeds of Trust, U. S. Government Bonds and Other Collateral Held by the Federal Home [19633] Loan Bank of San Francisco," dated March 13, 1948, or from any proceeds thereof, or from any funds,

assets, or securities on deposit in the Registry of this Court or from any funds, or in any manner whatsoever, in accordance with the oral decision of this Court made in open court on April 8, 1950, or in accordance with any formal written order entered pursuant thereto, is hereby stayed until the expiration of ten days from and after the entry of such formal written order or judgment of this Court for payment of such attorneys' fees.

It Is Further Hereby Ordered that the amount of the supersedeas bond to be filed by said Federal Home Loan Bank of San Francisco in conjunction with an appeal from the formal written order and judgment of this court for the payment of such attorneys' fees is hereby fixed in the amount of \$.....

Dated: This day of May, 1950.

.....,
U. S. District Judge.

[Lodged]: May 22, 1950. [19634]

[Title of District Court and Causes.]

No. 5421 and 5678-PH

REQUEST FOR HEARING OF EX PARTE
MATTER

To the Clerk of the Above-Entitled Court:

The United States of America by the United States Attorney requests that the matter listed below be placed on the Court's ex parte calendar for hearing on May 22, 1950 at 10:00 a.m., on Motion for Order Staying Payment of Attorneys' Fees and Fixing Amount of Supersedeas Bond.

Dated: Los Angeles, California, May 22, 1950.

UNITED STATES ATTORNEY,

By /s/ PAUL FITTING,

Assistant U. S. Attorney,

Attorneys for Plaintiff.

[Endorsed]: Filed May 22, 1950. [19635]

At a stated term, to wit: The February Term A. D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 22nd day of May in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Peirson M. Hall,
District Judge

[Title of Causes.]

This cause now coming before the Court; Sylvester Hoffman and Phillip Angel, Esqs., appearing as counsel for defendant San Francisco Bank; Paul Fitting, Ass't U. S. Att'y, appearing as counsel for official defendants;

Request by official defendants for ex parte hearing is filed;

Motion of San Francisco Bank for order staying payment of attorneys' fees and fixing amount of supersedeas bond is filed; and proposed order thereon is lodged. Court refuses to grant the said motion at this time. [19636]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED "FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND
ORDER RE ALLOWANCE OF ATTOR-
NEYS' FEES ON ACCOUNT"

The Home Loan Bank Board, an agency of the executive branch of the Government of the United States, William K. Divers, Chairman, J. Alston Adams and O. K. LaRoque, Members of the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, a corporate instrumentality of the United States wholly owned by the United States, and John H. Fahey, A. V. Ammann and George K. Bramley, without waiving the objections set forth in their "Memorandum in Opposition to Motions for Order Directing Payment of Attorneys' Fees on Account, and Repayment [19645] of Moneys Advanced, and the Supplements Thereto," filed herein on September 23, 1949, and in their "Memorandum in Opposition to Motions by Plaintiffs for Orders Directing Payment of Attorneys' Fees on Account and Costs," filed herein on February 23, 1950, and without waiving their objections to the jurisdiction of this Court over their respective persons and their other objections including objections to the jurisdiction and to venue, but specifically reserving and asserting the same, file under Rule 7(a) of this Court this written detailed statement of objections, together with the reasons therefor, to the proposed "Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' Fees

on Account'' served by mail upon counsel for these parties by W. I. Gilbert, Jr., Richard Fitzpatrick, and O'Melveny & Myers, on Saturday, May 20, 1950. This statement of objections, and the reasons therefor, is not a consent by these defendants to the form or substance of any part or all of the proposed "Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' Fees on Account'' in any respects not covered by this statement.

The proposed form of order provides on page 19 (lines 4 through 7) " * * * that the clerk of this court be, and he hereby is, directed and required to pay forthwith, out of funds and moneys heretofore deposited and now on deposit in the Registry of the court * * *" the fees awarded.

I.

The proposed order is objectionable in that it contains no stay pending appeal. These defendants are entitled to a stay of payment of the interim fees during the pendency of an appeal and it is the intention of these defendants to take such an appeal. Pending an appeal, the status quo should be preserved.

II.

If this Court is not inclined to include in the order a stay pending appeal, because it feels that application for a stay cannot be made until the order is signed, or for any other reason, these defendants are entitled to a full and fair opportu-

nity to seek to obtain a stay of such payment pending appeal, or equivalent relief, from any courts having the power to grant it, and these defendants intend to seek such a stay or equivalent relief. The order as presently drafted denies them this opportunity. [19646]

(a) The order should at least provide that no payment be made until the expiration of the ten-day period provided by Rule 62(a). The proposed provision above quoted creates confusion and uncertainty, conflicts with Rule 62(a), and makes it possible that the fees will be paid out pursuant to the order of the Court immediately on signing the order, and in disregard of Rule 62(a).

(b) If this Court feels that Rule 62(a) is not applicable to this order, these defendants are nevertheless entitled to equivalent protection in the order. These defendants are entitled to have the payment of the money stayed long enough to permit them to speedily apply to this Court for a permanent stay of execution, or equivalent relief, or to any other Court having the power to grant such relief, if necessary. Time is also necessary to perfect an appeal from the signed order, which appeal may be considered a prerequisite to the granting of any stay.

(c) Protection should be afforded to these defendants by the requirement that bond be posted by any one collecting the fees awarded, conditioned

upon repayment of the fees if it is ultimately determined that the fees are improper.

Respectfully submitted,

ERNEST A. TOLIN,

United States Attorney,

CLYDE C. DOWNING,

Assistant United States Attorney, Chief of Civil
Division,

PAUL FITTING,

Assistant United States
Attorney,

By /s/ PAUL FITTING,

Attorneys for Home Loan Bank Board, William
K. Divers, Chairman; J. Alston Adams, Member,
and O. K. LaRoque, Member, of the Home
Loan Bank Board, the Federal Savings and
Loan Insurance Corporation, John H. Fahey,
A. V. Ammann and George K. Bramley.

[Endorsed]: Filed May 24, 1950. [19647]

Title of District Court and Cause.]

DISAPPROVAL AND OBJECTIONS OF FEDERAL HOME LOAN BANK OF SAN FRANCISCO AS TO FORM OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER RE: ALLOWANCE OF ATTORNEYS' FEES ON ACCOUNT

Comes now Federal Home Loan Bank of San Francisco (hereinafter, for brevity, referred to as "San Francisco Bank"), defendant in Civil Action No. 5678-PH (WM), and cross-defendant and third party defendant in Civil Action No. 5421-PH, and without waiving any of its objections heretofore made in either of [19651] said actions as to venue or jurisdiction of the Court over the person of this defendant or the subject matter of said actions, or either thereof, but specifically reserving and asserting the same, and without waiving the objections set forth in the "Opposition of Federal Home Loan Bank of San Francisco to Plaintiffs' Motion and Supplemental Motion for an Order Fixing Attorneys' Fees and Directing Payment Thereof" dated September 7th, 1949, and duly filed herein, the "Answer and Opposition of Federal Home Loan Bank of San Francisco to the Motion and Order of First Federal Savings and Loan Association of Wilmington, dated February 10th, 1950" dated February 23rd, 1950, and duly filed herein, or any or all of the other objections heretofore made to the granting of any of the relief prayed for in or by any of the motions more specifically referred to in

the proposed "Findings of Fact, Conclusions of Law and Order Re Allowance of Attorneys' Fees on Account" served by mail upon only one of counsel for San Francisco Bank at 9:00 a.m. on Saturday, May 20th, 1950, but specifically reserving and asserting the same, and without waiving any of its objections that the proposed Findings of Fact are not supported by or are contrary to the evidence, are beyond or not within the issues before the Court, or are against law, or any other objections thereto, and without waiving any of its objections that the proposed Conclusions of Law are not supported by or are contrary to the evidence and the Findings of Fact, or are against law, or any other objections thereto, Disapproves the form of the proposed "Order re Allowance of Attorneys' Fees on Account" for payment of attorneys' fees to Messrs. O'Melveny & Myers and Richard Fitzpatrick, Esq., and to W. I. Gilbert, Jr., Esq., and Objects to the Form of said proposed order upon the following grounds:

1. That said proposed order, by its terms, directs the Clerk to pay said attorneys' fees forthwith out of funds and [19652] moneys heretofore deposited and on deposit in the Registry of the Court, and that such provisions for payment "forthwith" would deprive San Francisco Bank of the benefits of its right to appeal therefrom, and is contrary to law, in that:

(a) San Francisco Bank is entitled to the protection and benefits of the automatic stay of 10

days as provided by Rule 62(a) of the Federal Rules of Civil Procedure;

(b) In the event Rule 62(a) is held by this Court to be inapplicable to the instant proceeding or that the aforesaid automatic stay is deemed inapplicable to the terms or conditions of the proposed order, or otherwise inapplicable, San Francisco Bank is entitled to a reasonable opportunity after entry of an order for payment of said attorneys' fees and prior to payment thereof within which to present to this Court a timely motion for stay of any such order within which to perfect an appeal therefrom, and within which to apply, if necessary, to any other court for a stay during the pendency of an appeal;

(c) Although application for a stay in the payment of such attorneys' fees for a period of ten days from and after the entry of an order for such payment was presented to this Honorable Court on May 22nd, 1950, in open court, the Court has declined to act thereon upon the ground that said application was prematurely made.

2. That said proposed order does not provide for a stay of proceedings for its enforcement or a stay as to the payment of said attorneys' fees for 10 days after its entry, or for a permanent stay pending an appeal, which objection is made [19653] upon each and all of the foregoing specifications as to the foregoing objection "1."

3. That said proposed order, being an interim final order in a purported proceeding in equity, is

inequitable and unfair in that it fails to provide for a stay of payment of such attorneys' fees ending an appeal, or conditioned upon perfecting such appeal, or at all, notice of intention to appeal from any order allowing such attorneys' fees having been given by San Francisco Bank in open court at the conclusion of the hearings upon said motions, or in the alternative that said proposed order fails to require the giving of adequate or any bond, undertaking or security by the payees named in said proposed order, conditioned upon repayment in the event such order for payment is modified, vacated or set aside or reversed. That in the absence of a provision for stay or requirement of security contained in such order for payment, San Francisco Bank is or may be inequitably and unlawfully deprived of the benefits of its right of appeal.

4. That the proposed order does not designate with particularity from which specific funds or deposits in the Registry of the Court said fees or any part thereof are to be paid by the Clerk of this Court. The funds, notes, bonds and securities presently held in the Registry of the Court were received from various sources, all pursuant to numerous purported interpleaders, interventions and orders for deposit or impound, and there are no general funds in the Registry of the Court available for the payment of the proposed allowances. Consequently, if the order directs payment from funds or deposits in the Registry of this Court, it should specifically direct the Clerk to make payment only

from specifically designated funds or deposits therein. [19654]

5. That the proposed order fails to designate specifically the funds or deposits in the Registry of this Court and is so vague and uncertain as to the particular funds or deposits therein from which the Clerk is directed to make payment of said attorneys' fees, that the same could be paid from the notes, funds, assets or securities deposited in said Registry by San Francisco Bank pursuant to the "Order Requiring Deposit of Certain Notes, Deeds of Trust, U. S. Government Bonds and Other Collateral Held by the Federal Home Loan Bank of S. F." dated March 13th, 1948, or from substituted collateral thereafter deposited in said Registry, which such payment would result in the irreparable prejudice and injury of San Francisco Bank. Said notes, funds, assets or securities so deposited by San Francisco Bank consist of notes in the aggregate principal sum of \$6,300,000 in favor of San Francisco Bank, as payee, and collateral securing the same, together with certain funds thereafter deposited as substitute collateral. As to said notes and collateral various claims are asserted in these consolidated actions as follows:

(a) San Francisco Bank claims and asserts that said notes are its property and that it is entitled to hold and have maintained the collateral securing the same in an amount adequately sufficient to secure payment thereof and the accruing interest thereon, until fully paid;

(b) Plaintiffs in action No. 5421-PH and Long

Beach Federal Savings and Loan Association, as a party thereto, claim and assert that said notes create no valid obligations as to said Association and that said Association is entitled to all of said collateral without payment of the debts or obligations evidenced by said notes. [19655]

(c) Plaintiffs in action No. 5678-PH claim and assert that said notes and collateral securing the same are the property of Federal Home Loan Bank of Los Angeles.

The respective aforesaid claims concerning said notes and collateral cannot be adjudicated until there has been a trial of said actions on the merits and no such trial has been had. To direct the payment of attorneys' fees in the manner of the proposed order would constitute a determination of said respective claims upon the merits prior to a trial thereon to the prejudice of and irreparable injury to San Francisco Bank and would be tantamount to a personal judgment against San Francisco Bank and a levy of execution thereon, and would constitute the taking of property of San Francisco Bank without trial, arbitrarily, and without due process of law, would be against and contrary to law, and beyond the power or jurisdiction of this Court.

6. That the condition of said proposed order providing that no part of said attorneys' fees shall be assessed ultimately against Long Beach Federal Savings and Loan Association or its assets and relieving said Association from the obligation to re-

plenish any deficiency in collateral arising by reason of said proposed order or the payment of said attorneys' fees in accordance therewith, constitutes a determination on the merits of the respective claims of San Francisco Bank and said Association with respect to said notes and collateral, without a trial, and is contrary to law, premature, beyond the power or jurisdiction of this Court and outside the issues of said motions for allowance of attorneys' fees, and such condition would deprive San Francisco Bank of its property without due process of law to its irreparable injury. [19656]

7. That said proposed order is equivocal and not capable of enforcement for the reason that in the event that the claims of the aforesaid Association with respect to the notes deposited in accordance with the aforesaid order dated March 13th, 1948, and the collateral securing the same are upheld upon a trial on the merits, then there is no property or assets now in the Registry of this Court, other than that claimed by or belonging to said Association, and in such event the condition of said proposed order could not be met.

8. That there are no funds or deposits in the Registry of this Court claimed by or on behalf of said Federal Home Loan Bank of Los Angeles, directly or indirectly, except funds and deposits claimed by San Francisco Bank to be its property; and as to these there has been and can be no adjudication, prior to a trial on the merits, that such funds and deposits are directly or indirectly the

property of plaintiffs in action No. 5678-PH, or any of them, as against which an award of attorneys' fees can be made in a purported class action, or within the issues as pleaded in said action; any such order for payment of said attorneys' fees out of funds or deposits in the Registry of this Court would be tantamount to a determination of the merits of said action No. 5678-PH, without trial, and would constitute a premature, prejudicial, arbitrary and unlawful deprivation of property of San Francisco Bank without due process of law, to its irreparable injury.

9. That there are no funds on deposit in the Registry of this Court that are available for payment of the attorneys' fees which are the subject of the proposed order in accordance with and under the terms and conditions of said proposed order.

The foregoing Objections are made and based upon the Rules of the United States District Court for the Southern District [19657] of California, as amended, and particularly Rule 7(a) thereof, upon Rules 6(a), 6(e), 62(a), 62(d) and 62(g), Federal Rules of Civil Procedure, upon the files, records, pleadings and proceedings in the aforesaid actions and each and both of them, upon the files, records and books of the Clerk of this Court, showing or making reference to the funds, notes, securities and other property heretofore deposited in or withdrawn from the Registry of this Court, including funds, notes, securities and other property substituted therefor, upon the written "Motion for Order Staying Payment of Attorneys' Fees and Fixing

Amount of Supersedeas Bond'' presented, made and filed with this Court by San Francisco Bank, ex parte, in open court, on May 22nd, 1950, and upon the Order thereon as proposed by San Francisco and at said time filed with this Court.

Dated: May 24th, 1950.

VERNE DUSENBERY,
PHILIP H. ANGELL,
IRVING G. BISHOP,
SYLVESTER HOFFMAN,

By /s/ SYLVESTER HOFFMAN,
Attorneys for Federal Home Loan Bank of San
Francisco.

[Endorsed]: Filed May 24, 1950. [19658]

[Title of District Court and Cause.]

PROPOSED AMENDMENTS, ADDITIONS
AND/OR DELETIONS TO FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER RE ALLOWANCE OF ATTOR-
NEYS' FEES ON ACCOUNT, PROPOSED
BY PREVAILING PARTIES IN MOTIONS
FOR ATTORNEYS' FEES HERETOFORE
LODGED MAY 19, 1950

I.

The the language in paragraph 5, page 4, line 22, starting with the words "That the cross-claim of Federal Home Loan Bank of Los Angeles," etc.,

to and including the words "grounds" on line 2 of page 5, be amended to read as follows:

"That the cross-claims of all parties to said consolidated actions, including but not limited to Federal Home Loan Bank of Los Angeles, were filed, and at all times since, have been and now are, being prosecuted and maintained in good faith and on reasonable grounds. That all other pleadings filed and appearances made, by any or all of said plaintiffs, third-party plaintiffs and cross-claimants, in either or both said consolidated actions Nos. 5678-P.H. and 5421-P.H., were filed and made, and all proceedings had, in each of said actions on the part of any or all of said parties, have been carried on and are now being carried on by said parties through their respective counsel of record, in good faith and on reasonable grounds."

II.

That the language in paragraph 12, page 9, lines 19 to 21 inclusive, starting with the words "That said letter" and ending with the words "settlement negotiations," be amended to read as follows:

"That said letter was dated April 27, 1949, and was written by Attorney Peyton Ford, Assistant to the Attorney General of the United States, as attorney for the above-listed Defendants in connection with the request that counsel for the plaintiffs, Mallonee, et al., and counsel for the [19677] Long Beach Federal Savings and Loan Association, and counsel for the Title Service Company and counsel for Robert H. Wallis, stipulate and agree that the

Court's announced order fixing an amount of approximately \$540,000.00 as an allowance on account of attorneys' fees on account of services rendered, be vacated and set aside and that a new and different allowance on account in the amount of only approximately one-third thereof be ordered entered at said time.

That a true and correct copy of said letter was ordered filed in the within proceedings by Order of this Court duly made and entered May 10, 1949. That this Court and the parties and all of them, relied upon said letter of said Attorney Peyton Ford, Assistant to the Attorney General of the United States, dated April 27, 1949, and that said letter and the stipulations made in reliance thereupon, submitted all of said parties so stipulating to the jurisdiction of this Court for the determination of all of such matters of attorneys' fees to be subsequently judicially determined in adversary proceedings by this Court.

That in reliance upon said representations in the said letter dated April 27, 1949, and signed by Attorney Peyton Ford, Assistant to the Attorney General of the United States, as attorney for Defendants Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann, and Federal Savings and Loan Insurance Corporation, the said parties did so stipulate to the vacating of said priorly announced attorneys' fee [19678] order, and in reliance thereon this Court did make and duly enter its Findings of Fact, Conclusions of Law and Or-

der for Interim Allowances on Account of Attorneys' Fees, prior to December 15, 1948, which Order was duly made and entered May 10, 1949, and which said Order and Judgment has now become final.

That pursuant to the submission to the jurisdiction of this Court, contained in said letter of April 27, 1949, of the said Attorney Peyton Ford, Assistant to the Attorney General of the United States, and in compliance with the terms and provisions of the Order for Interim Allowances on Account of Attorneys' Fees incurred prior to December 15, 1948, filed herein on May 10, 1949, and which Order has now, by the lapse of time, become a final Order of this Court, any and all further attorneys' fees for any and all of the parties litigant herein shall be judicially determined in adversary proceedings.

The request for refunds of costs, expenses and/or attorney fees heretofore paid or advanced outside of, and without order of this Court, by the defendants and cross-defendants Federal Home Loan Bank of San Francisco, and its officers and directors, is not considered a necessary part of this Order allowing interim attorneys' fees on account, to counsel for Plaintiffs in Consolidated Action 5678-(WM)-P.H., and is therefore, placed off calendar and not now decided. [19679]

III.

That the language in sub-paragraph (f) of paragraph 3, page 15, line 4, starting with the words "The sum of \$36,485.25 deposited in the," be amended to read as follows:

"The sum of \$55,485.25 deposited in the"

IV.

That the language in paragraph 8, page 17, lines 9 to 14, starting with the words "That the matters," and ending with the words "of law and of fact," be amended to read as follows:

"That the matters and persons concerned in this litigation and in Home Loan Bank Board Order No. 2015 and in proceedings which might be had thereunder, are overlapping, coincidental and mutually inter-related. The decision of one or more of the issues in either likewise involves a decision of one or more of the issues in both said Order No. 2015 and this litigation. This litigation and any proceedings which might be had under said Order No. 2015 involve the determination of common questions of law and of fact."

V.

That the language in paragraph 10, page 17, line 24, starting with the words "includes jurisdiction to decide any and all issued in these," be amended to read as follows:

"includes jurisdiction to decide any and all issues in these."

VI.

That the language on page 19, lines 15 to page 20, line 1, starting with the words "It is a condition," and ending with the [19680] words "be meet and just," be amended to read as follows:

"The Court hereby specifically reserves power and jurisdiction to hear and determine in adversary proceedings or otherwise, any and all petitions and

motions for determination, fixing, allowance, allocation, assessment, or apportionment, of attorneys' fees, costs, and/or expenses, for or against any or all of the parties as in its discretion it may deem advisable or appropriate; except it is further ordered, that the amounts ordered hereby paid generally from the funds in the Registry of the Court are not by the terms of this Order, imposed, allocated or assessed upon or against any specific party or parties, fund or funds, provided however, that it is hereby determined and ordered that the amounts herein allowed and ordered paid from said funds shall never be allocated against or impose any part of the same against or upon funds or assets owned by or belonging to the Long Beach Federal Savings and Loan Association, or any of its shareholders, members, or stockholders, either individually, nor as an association."

VII.

That there be inserted on page 20, line 10, following the words "the judgment contained herein," on line 9, an additional paragraph reading as follows:

"All matters and items not expressly herein allowed, disallowed or otherwise passed upon, are continued submitted, pending the further order and determination of this Court." [19681]

Dated this 1st day of June, 1950.

WESTOVER & SMITH,

By /s/ WYCKOFF WESTOVER,
Attorneys for Plaintiffs Mallonee, et al., in Action
No. 5421-P.H.

/s/ CHARLES K. CHAPMAN,
Attorney for cross-claimant and third-party plain-
tiff Long Beach Federal Savings and Loan As-
sociation.

[Endorsed]: Filed June 1, 1950. [19682]

[Title of District Court and Cause.]

DISAPPROVAL AND OBJECTIONS OF FED-
ERAL HOME LOAN BANK OF SAN
FRANCISCO TO PROPOSED AMEND-
MENTS, ADDITIONS AND/OR DELE-
TIONS TO FINDINGS OF FACT, CON-
CLUSIONS OF LAW AND ORDER RE
ALLOWANCE OF ATTORNEYS' FEES
ON ACCOUNT PROPOSED BY PREVAIL-
ING PARTIES ON MOTION FOR ATTOR-
NEYS' FEES HERETOFORE LODGED
MAY 19, 1950, FILED ON BEHALF OF
PLAINTIFFS MALLONEE, ET AL., AND
LONG BEACH FEDERAL SAVINGS AND
LOAN ASSOCIATION.

Comes Now Federal Home Loan Bank of San
Francisco (hereinafter for brevity referred to as

San Francisco Bank), defendant [19689] in Civil Action 5678-PH (W.M.) and cross-defendant and third party defendant in Civil Action No. 5421-PH and, without waiving any of its objections heretofore made in either of said actions as to venue or jurisdiction of the Court over the person of this defendant or the subject matter of said actions, or either of them, but specifically reserving and asserting the same, and without waiving the objections heretofore made and filed in opposition to plaintiffs and each of their motions and supplemental motions for orders fixing attorneys' fees and the objections as to form of proposed findings of fact, conclusions of law and order re allowance of attorneys' fees on account heretofore filed herein, but specifically reserving and asserting the same, and without waiving any of its objections that the proposed finding of facts are not supported by or are contrary to the evidence, are beyond or not within the issues before the Court or are against law, or any other objections thereto, and without waiving any of its objections that the proposed conclusions of law are not supported by or are contrary to the evidence and findings of fact or are against law, or any other objections thereto, hereby objects to the Proposed Amendments, Additions and/or Deletions to Findings of Fact, Conclusions of law, and Order Re Allowance of Attorneys' Fees on Account, Proposed by Prevailing Parties in Motions for Attorneys' Fees Heretofore Lodged May 19, 1950," heretofore filed herein by and on behalf of plaintiffs Mallonee, et al., and cross-claimant and

third party plaintiff, Long Beach Federal Savings and Loan Association, copy of which was served upon one of counsel for San Francisco Bank on Friday, June 2, 1950, upon the following grounds:

1) That the proposed amendment to paragraph 5, page 4, line 22 through line 2, page 5 of said proposed finding of fact, the text of which proposed amendment is set forth on page 2 of [19690] said proposed amendment, lines 6 through 20, inclusive, purports to encompass matters beyond the issues presented by said motions for allowance of attorneys' fees and the respective objections thereto, are beyond the evidence presented upon the hearings upon said motions, are not supported by the evidence, and are against law and that such proposed amendment is not a proper finding of fact, and is extraneous to and irrelevant to the issues presented upon said motions and objections thereto;

2) That the proposed amendment of paragraph 12 of said proposed findings of fact, page 9, lines 19 through 21, inclusive, as set forth in the proposed amendments at page 2, line 27 through page 4, line 20, inclusive, are beyond the evidence presented upon the hearings upon said motions, are not supported by the evidence, and are against law and such proposed amendment is not a proper finding of fact, and is extraneous to and irrelevant to the issues presented upon said motions and objections thereto; and further that said proposed amendment is contrary to the record, the stipulations of the parties heretofore filed and made in open court in

connection with hearings upon the allowance of attorneys' fees referred to in said proposed amendment, and contrary to the express intention of the parties participating therein; and further that the record relating to proceedings for interim allowances on account of attorneys' fees prior to December 15, 1948, which culminated in the order made and entered May 10, 1949, clearly discloses that at all times said San Francisco Bank objected to the jurisdiction of the court and reserved all its objections thereto and at no time stipulated or agreed, directly or indirectly, that attorneys' fees for said San Francisco Bank should be judicially determined in adversary proceedings, and that the language of said proposed amendment contained on page 4, lines 17 through 20, inclusive, is [19691] clearly contrary to the record, evidence, findings of fact and conclusions of law in connection with said proceedings for interim allowance on account of attorneys' fees prior to December 15, 1948.

3) That the proposed amendment to the form of proposed order appearing on page 19, line 15 to page 20, line 1, as said proposed amendment is set forth on page 6, lines 2 through 22, inclusive, of said proposed amendments is objectionable and contrary to law upon the same grounds as are set forth in paragraphs 4 through 9, inclusive, of the Disapproval and Objections of San Francisco Bank heretofore filed to said proposed form of order; and further that the proposed language contained in said proposed amendment on page 6, lines 2 through 9, inclusive, purporting to reserve to the court

power and jurisdiction to hear and determine in adversary proceedings the fixing and allowance of attorneys' fees, costs or expenses for or against any or all parties to said litigation is beyond the power and jurisdiction of the court, is contrary to law, seeks to encompass matters beyond and outside the scope of the issues presented to the court upon said motions for order fixing attorneys' fees and the objections thereto, and is without support in the evidence taken on hearings upon said motions, and is not supported by said proposed findings of fact or conclusions of law or amendments thereto.

The foregoing Objections are made and based upon the Rules of the United States District Court for the Southern District of California, as amended, and particularly Rule 7 (a) thereof, upon Rules 6(a), 6(e), 62(a), 62(d) and 62(g), Federal Rules of Civil Procedure, upon the files, records, pleadings and proceedings in the aforesaid actions and each and both of them, upon the files, records and books of the Clerk of this Court, showing or [19692] making reference to the funds, notes, securities and other property heretofore deposited in or withdrawn from the Registry of this Court, including funds, notes, securities and other property substituted therefor, upon the written "Motion for Order Staying Payment of Attorneys' fees and Fixing Amount of Supersedeas Bond" presented, made and filed with this Court by San Francisco Bank, ex parte, in open Court on May 22nd, 1950, upon the Order thereon as proposed by San Francisco Bank and at

said time filed with this Court, and upon "Disapproval and Objections of Federal Home Loan Bank of San Francisco as to Form of Proposed Findings of Fact, Conclusions of Law and Order Re: Allowance of Attorneys' Fees on Account" heretofore filed herein.

Dated: June 6, 1950.

VERNE DUSENBERY,
BISHOP & HOFFMAN,
PHILIP H. ANGELL,

By /s/ PHILIP H. ANGELL,
Attorneys for Federal Home
Loan Bank of San Francisco.

[Endorsed]: Filed June 8, 1950. [19693]

In the District Court of the United States for the
Southern District of California, Central
Division

No. 5678-PH(WM) Civil Consolidated With
No. 5421-PH Civil

FEDERAL HOME LOAN BANK OF LOS
ANGELES, a Body Corporate, et al.,
Plaintiffs,

vs.

FEDERAL HOME LOAN BANK OF PORT-
LAND, a Body Corporate, et al.,
Defendants.

PAUL MALLONEE, et al.,
Plaintiffs,

vs.

JOHN H. FAHEY, et al.,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER RE ALLOWANCE OF
ATTORNEYS' FEES ON ACCOUNT

The motion of plaintiffs in Action No. 5678-PH(WM) for an order directing payment of attorneys' fees on account (of legal services heretofore rendered and to be rendered in the above-entitled consolidated actions and each of them by Richard Fitzpatrick, Esq. and Messrs. O'Melveny & Myers for and on behalf of said plaintiffs in said consolidated Action No. 5678-PH(WM), and for and on behalf of defendant, third-party defendant,

cross-claimant and cross-defendant Federal Home Loan Bank of Los Angeles in consolidated Action No. 5678-PH) which said motion was filed on or about January 6, 1949, and a supplement thereto was filed on or about July 8, 1949, and the motion and petition of plaintiff First Federal Savings & Loan Association of Wilmington for allowance of attorneys' fees on account (of legal services heretofore rendered in the above-entitled consolidated actions and each of them by W. I. Gilbert for and on behalf of plaintiff First Federal Savings & Loan Association of Wilmington), which said latter motion and petition was filed on or about February 10, 1950, came on duly and regularly on February 27, 1950, before the Honorable Peirson M. Hall, District Judge presiding, said moving parties and each of them and as well the following other parties and each of them, to wit:

Plaintiffs Mallonee, et al., in Civil Action No. 5421-PH.

Defendant, Third-Party Plaintiff and Cross-Claimant, Long Beach Federal Savings and Loan Association, in Civil Action No. 5421-PH.

Defendant Federal Home Loan Bank of San Francisco, in Civil Action No. 5678-PH(WM), and Third-Party Defendant and Cross-Defendant in Civil Action No. 5421-PH.

Plaintiffs other than First Federal Savings and Loan Association of Wilmington, an incorporated association, in Civil Action No. 5678-PH(WM) and [19744] Defendant, Third-Party Defendant, Cross-Claimant and Cross-

Defendant, Federal Home Loan Bank of Los Angeles, in Civil Action No. 5421-PH.

Defendant, Ammann, individually and as Conservator, in Civil Action No. 5421-PH, and John H. Fahey, individually, Defendant in Civil Action No. 5678-PH(WM), and John H. Fahey, individually and as Commissioner, Defendant and Cross-Defendant in Civil Action No. 5421-PH.

(Special appearance only.)

Plaintiff, First Federal Savings and Loan Association of Wilmington, an incorporated association, in Civil Action No. 5678-PH(WM).

Defendant and Cross-Claimant, Title Service Company, in Civil Action No. 5421-PH.

Defendant and Cross-Claimant, Robert Wallis, in Civil Action No. 5421-PH.

appearing by and through their respective counsel of record, whereupon and on said date of February 27, 1950, and on February 28, 1950, and, after continuances duly and regularly ordered by the Court, on April 7, 1950, and April 8, 1950, said motions and each of them and said petition were duly heard, evidence both oral and documentary was received, said matters and each of them were duly argued and submitted for decision; wherefore

The Court Finds

1. In all respects as declared in the Conclusions of Law hereinafter set forth.

2. That due, timely and sufficient notice of the hearings of said motions, and each of them, and of said petition, has been given. Such notice was given in all respects as specified respectively in that certain order setting for hearing said motion of plaintiffs, and each of them, in said action No. 5678-PH (WM) filed herein on January 31, 1950, and that certain order fixing the time for hearing of said motion and petition of said First [19745] Federal Savings and Loan Association of Wilmington filed herein on February 10, 1950; reference to each of said orders is hereby made for further specification.

3. That although due notice was given to each Association and person who could possibly be interested in the disposition of any money, either in court or in the hands of the San Francisco Bank, no person or Association so notified, or otherwise, has appeared to enter or make any objection or protest concerning the disposition of such funds, save and except those actually present in court through their counsel to wit: San Francisco Bank, Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann, and Federal Savings and Loan Insurance Corporation.

4. That the above actions, entitled Mallonee, et al., vs. Fahey, et al., No. 5421-PH and Los Angeles Bank et al., vs. San Francisco Bank, et al., No. 5678-PH(WM) have heretofore been ordered consolidated for all purposes.

5. That said actions were and each of them was

commenced and at all times since have been and now are being prosecuted and maintained by the plaintiffs therein, and each of them, through their respective counsel of record, in good faith and on reasonable grounds. That the cross-claims of all parties to said consolidated actions, including but not limited to Federal Home Loan Bank of Los Angeles, were filed, and at all times since, have been and now are, being prosecuted and maintained in good faith and on reasonable grounds. That all other pleadings filed and appearances made, by any or all of said plaintiffs, third-party plaintiffs and cross-claimants, in either or both said consolidated actions Nos. 5678-PH and 5421-PH, were filed and made, and all proceedings had, in each of said actions on the part of any or all of said parties, have been carried on and are now being carried on by said parties through their [19746] respective counsel of record in good faith and on reasonable grounds. That evidence of said good faith and reasonable grounds is illustrated by, but not limited to, the findings, conclusions and recommendations of the Special Committee Report of the United States Congress filed as an exhibit in the proceedings had upon the motion for attorneys' fees by the plaintiffs in said Action No. 5678-PH.

6. That the above-entitled actions were filed and since have been maintained and prosecuted as Class actions; 5421-PH being originally filed on behalf of approximately 16,000 shareholder depositors of the Long Beach Federal Savings and Loan Association, and 5678-PH filed for all of the groups of

Federal Savings and Loan Associations, State Building and Loan Associations and other financial institutions, all members and stockholders of plaintiff Federal Home Loan Bank of Los Angeles.

7. That on or about the 29th day of March, 1946, the Federal Home Loan Bank of Los Angeles had assets of approximately \$46,000,000.00, was entirely solvent, and had a surplus of approximately \$1,900,000.00. That the business, property and assets of said Los Angeles Bank as well as the property and assets of its shareholder and member Associations then in the possession of the Los Angeles Bank either as pledgee, depositary, custodian, trustee or bailee, or otherwise, were, on or about March 29th, 1946, and without notice, hearing or trial, seized among others by defendants Fahey and Ammann and purportedly on said date of March 29th, 1946, the said Los Angeles Bank was by said defendants, liquidated, consolidated, merged and dissolved. That the defendant and cross-defendant Federal Home Loan Bank of San Francisco and/or Federal Home Loan Bank of Portland, on said date, and acting in concert with Fahey, Ammann and other defendants and [19747] cross-defendants, received and took possession and control of said assets herein referred to and which at the time of said seizure, were in possession of the Federal Home Loan Bank of Los Angeles. That after said seizure, the said San Francisco and/or Portland Bank has ever since been in possession of said assets and since said date the plaintiff Los Angeles Bank, as such, has had no property or

assets in its actual possession or under its actual control with which to employ counsel. That on said date said assets were purportedly transferred by certain defendants to said Portland Bank without any consideration to the Los Angeles Bank or any of its member stockholders and without any resolution by the Portland Bank requesting permission to acquire any assets of the Los Angeles Bank and without any resolution or request of the Portland Bank to assume any of the liabilities of the Los Angeles Bank. That simultaneously with said seizure the name of said Portland Bank was purportedly changed to Federal Home Loan Bank of San Francisco by the Federal Home Loan Bank administration.

8. That in these actions in which have heretofore been filed numerous and sundry cross-claims, interventions, third-party pleadings, motions and petitions and other matters in interpleader or in the nature of the interpleader pursuant to which and under proceedings and hearings thereon, after notice duly given, there has been deposited in this court assets amounting to approximately \$14,000,000.00 which now remain in the registry of this court waiting disposition by further order, proceeding or adjudication of this court and which cannot be disposed of without order of this court. That said assets in the registry of this court are adequate to cover the allowance of attorneys' fees hereinafter made, without the requirement of the deposit of additional money or property.

9. That the San Francisco Bank has in its possession, or in the registry of the court, funds of many Savings and Loan Associations, members of the class or classes represented by the Association plaintiffs, which said funds will include funds merely [19748] on deposit in said San Francisco Bank, and not held by said San Francisco Bank as collateral. That said funds herein described are substantially in excess of the allowance of attorneys' fees hereinafter made.

10. That there is evidence that certain defendants herein have by intimidation, sought to prevent and preclude plaintiffs herein and Associations of the class represented by them from obtaining the advice or services of counsel to protect the interests of said Association or to represent them in court. That said intimidation has been evidenced by apparent threats of seizure if such Associations spent or appropriated funds for legal expenses or attorney fees in that the record discloses that on March 15, 1946, the Los Angeles Bank, by resolution, appropriated funds for legal expenses and attorney fees in connection with the investigation by the Sub Committee of the United States Congress and that defendant John H. Fahey was advised of such resolution on or about March 18, 1946, and that thereafter to wit, on or about March 29, 1946, said Los Angeles Bank was seized in the manner hereinbefore specified. That subsequent to the seizure of the Los Angeles Bank and prior to seizure of the Long Beach Federal Savings and Loan Association spot checks of the various Associations were made

at the instigation of certain defendants herein for the purpose of ascertaining whether or not other Associations were making appropriations for the same purposes. That on May 8, 1946, the Long Beach Federal Savings and Loan Association appropriated funds by resolution for the purpose of employing counsel to conduct appropriate legal proceedings to restrain the Federal Home Loan Bank Commissioner or his deputies from interfering with the normal and proper conduct of the affairs of the said Long Beach Federal Savings and Loan Association, and that on [19749] May 20, 1946, the assets of the said Long Beach Federal Savings and Loan Association were seized without notice or hearing by, among others, the same defendants who seized the Los Angeles Bank. That in December, 1949, certain officers of plaintiff First Federal Savings and Loan Association were approached by representatives of certain defendants for the purpose of ascertaining whether or not the said Association had appropriated funds to pay its attorney in connection with the above proceedings. That said acts and conduct as herein described furnished and furnish reasonable ground for the plaintiffs in Action 5678-PH and the Associations represented by them to believe that if said Associations or any of them appropriated, or now appropriates, or uses their funds for purposes of defraying legal expenses or counsel fees that they might have been, or may likewise be, seized in the manner that the said Los Angeles Bank and Fed-

eral Savings and Loan Association of Long Beach were seized.

11. That a portion of the books and records of San Francisco Bank reveal that out of the funds in the possession of the San Francisco and/or Portland Bank hereinbefore described and which funds consisted of assets of the Los Angeles Bank co-mingled with funds of the Portland Bank, the said San Francisco Bank has paid, for the purpose of resisting plaintiffs' claims, the sum of approximately \$100,000.00 to defray legal expenses and attorney fees in addition to indirect or other expenses not presently known.

12. That no delay in the prosecution of any of the phases of this litigation has occurred on the part of plaintiffs, cross-claimants or others seeking relief against defendants and said plaintiffs and cross-claimants have diligently prosecuted and maintained this action and these proceedings. That for approximately one year no active proceedings were had in these cases for the [19750] reason that settlement negotiations were being discussed and said negotiations proceeded actively from December, 1948, until on or about the first part of October, 1949. That Attorney Peyton Ford, the Assistant to the Attorney General of the United States, as attorney for defendants, Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann and Federal Savings and Loan Insurance Corporation, on behalf of certain defendants wrote and

caused to be filed in the record a certain letter and which said letter was relied upon by counsel and the court, and which stated, in part, as follows:

“(1) The attorneys’ fees, whether interim or final, shall be judicially determined in an adversary proceeding and the stipulation dated March 22, 1949, and the subsequent award of April 1, 1949, be vacated, or

“(2) Following the suggestion of the court, one-third of the amount awarded by the court in its decision of April 1st shall be paid now on proper order of the court (less the deduction of \$50,000 previously paid, as provided in presently proposed order), regardless of the outcome of negotiations for settlement; the said stipulation and award shall be vacated and any further attorneys’ fees shall be judicially determined in an adversary proceeding at the conclusion of negotiations for settlement, if agreement thereon be reached, or in the litigation, if such there be, or

“(3) Following the suggestion of Mr. Fussell, one-third of the amount awarded by the court in its decision of April 1, 1949, to be paid now as an interim allowance on account by order of the court (less the deduction of \$50,000 previously paid as provided in presently proposed order) regardless of the outcome of any further negotiations for settlement; the said stipulation and award shall be vacated and any further attorneys’ fees shall be determined by the court on such showing

as the court may require, subject to agreement of the parties as to the maximum amount thereof at the conclusion of negotiations for settlement, if agreement thereon be reached. If no settlement be reached, any additional fees shall be judicially determined in said litigation."

That said letter was dated April 27, 1949, and was written by Attorney Peyton Ford, Assistant to the Attorney General of the United States, as attorney for the above-listed Defendants in connection with the request that counsel for the plaintiffs, Mallonee, et al., and counsel for the Long Beach Federal Savings and Loan Association, and counsel for the Title Service Company and counsel [19751] for Robert H. Wallis, stipulate and agree that the Court's announced order fixing an amount of approximately \$540,000.00 as an allowance on account of attorneys' fees on account of services rendered, be vacated and set aside and that a new and different allowance on account in the amount of only approximately one-third thereof be ordered entered at said time.

That a true and correct copy of said letter was ordered filed in the within proceedings by Order of this Court duly made and entered May 10, 1949. That this Court and the parties and all of them, relied upon said letter of said Attorney Peyton Ford, Assistant to the Attorney General of the United States, dated April 27, 1949.

That in reliance upon said representations in the said letter dated April 27, 1949, and signed by

Attorney Peyton Ford, Assistant to the Attorney General of the United States, as attorney for Defendants Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann, and Federal Savings and Loan Insurance Corporation, the said parties did so stipulate to the vacating of said priorly announced attorneys' fee order, and in reliance thereon this Court did make and duly enter its Findings of Fact, Conclusions of Law and Order for Interim Allowances on Account of Attorneys' Fees, prior to December 15, 1948, which Order was duly made and entered May 10, 1949, and which said Order and Judgment has now become final.

The motions of various parties to compel San Francisco Bank to refund costs, expenses and/or attorney fees heretofore paid or advanced outside of, and without order of this Court, by the said Federal Home Loan Bank of San Francisco, and its officers and directors, is not considered a necessary part of this Order allowing interim attorneys' fees on account to counsel for Plaintiffs in Consolidated Action 5678-(WM)-PH, and is therefore, placed off calendar and not now decided. [19752]

13. That in prior proceedings during the approximate four years in which these cases have been pending before this court and/or the United States Circuit Court of Appeals and/or United States Supreme Court, there have been many hearings at which testimony was taken and evidence introduced. That such hearings resulted in orders,

injunctions and judgments which orders, injunctions and judgments contained various Findings of Facts, many of which have become final by expiration and lapse for the time of appeal or review thereof and as to the matters and [19753] things therein covered are *res adjudicata*. That among other things recited in one or more of said orders heretofore made by this court it has been held by this court that it has jurisdiction of the parties and subject matter of the litigation from certain of which orders so holding appeals were taken by the Home Loan Bank Board and/or its agents, and thereafter dismissed. That this court has jurisdiction over the parties and subject matter of the within actions.

14. O'Melveny and Myers and Richard FitzPatrick have rendered legal services in said consolidated action for and on behalf and for the benefit of and as counsel of record for Federal Home Loan Bank of Los Angeles, and the parties plaintiff in Action No. 5678-PH(WM) other than said Los Angeles Bank in substance, manner and form as is averred in detail in that certain affidavit of Pierce Works and John Whyte filed herein on or about January 6, 1949, in that certain affidavit of Paul Fussell and John Whyte filed herein on or about July 8, 1949, in that certain affidavit of Paul Fussell filed on or about April 7, 1950, and in those three certain affidavits of Richard FitzPatrick filed respectively on January 6, 1949, July 8, 1949, and April 7, 1950. All averments of fact with refer-

ence to the rendition of said services have been admitted. The court finds each and all of said averments of fact with reference to said services to be true, and that said services were rendered for and on behalf of, and for the benefit of, said Los Angeles Bank and said other members of said class. For that reason no detailed findings thereon are herein made, but reference is had to said affidavits and the evidence herein for further particulars. In this connection the court further finds that on or about August 22, 1949, W. I. Gilbert, Jr., was substituted as counsel of record for First Federal Savings and Loan Association of Wilmington in the place and stead of O'Melveny and [19754] Myers and Richard Fitzpatrick and that since said date said O'Melveny and Myers and Richard Fitzpatrick have rendered no services for said Association.

15. W. I. Gilbert, Jr., has rendered legal services in said consolidated actions for and on behalf and for the benefit of and as counsel of record for First Federal Savings and Loan Association of Wilmington in substance, manner and form as is averred in detail in that certain affidavit of W. I. Gilbert, Jr., filed herein on or about February 17, 1950. All averments of fact with reference to the rendition of said services have been admitted. And the court finds each and all of said averments of fact with reference to the rendition of said services to be true and that said services were rendered for and on behalf of and for the benefit of said association and other members of said class. For that reason no detailed findings thereon are herein made

but reference is had to said affidavits and the evidence herein for further particulars.

16. Each of the plaintiff Associations in Action No. 5678-PH(WM) sue both for themselves and for all other associations, members or stockholders of said Los Angeles Bank as a class. Any and all services rendered to any of said plaintiff associations, as hereinabove found, inured directly to the benefit of each such plaintiff association and as well to the benefit of any and all member or stockholder associations of said Los Angeles Bank and to the protection and preservation of the assets and property of said plaintiffs and the class consisting of all members and/or stockholders of said Los Angeles Bank in the possession or purported possession of Federal Home Loan Bank of San Francisco.

17. Any and all services rendered said Los Angeles Bank, as hereinabove found, inured directly to the benefit of said bank, and to the protection and preservation of the business, [19755] property and assets formerly in the possession of said Los Angeles Bank and seized therefrom on March 29, 1946, as hereinabove found.

18. The value of the services rendered by O'Melveny and Myers and Richard Fitzpatrick as hereinabove found, is substantially in excess of the sum of \$67,500.00.

19. The value of the services rendered by W. I.

Gilbert, Jr., as hereinabove found, is substantially in excess of the sum of \$7500.00.

20. That plaintiffs nor any of them are estopped by reason of any act or conduct on their part or otherwise from receiving allowances on account of attorney fees.

21. That there is no specific finding as to the total value of the services rendered to the date for which payment was requested; the allowance herein is made an interim allowance on account only; the value of the services rendered substantially exceeds the amounts awarded. [19756]

Conclusions of Law

The Court Concludes:

1. In all respects as set forth in the foregoing Findings of Fact.

2. That upon the filing of the complaints herein, original jurisdiction vested in this Court, by virtue of the presentation of many federal questions, arising under the Constitution and laws of the United States, among which are:

(a) Constitutionality of the following Acts of Congress:

Home Owners Loan Act;

Federal Home Loan Bank Act;

First and Second War Powers Act;

and related acts and amendments to one or more of said acts.

(b) Constitutionality, construction and validity

of regulations and amendments and repeals of regulations by defendants Home Loan Bank Board and their predecessors, and by other governing authorities of the United States.

(c) Constitutionality, construction and validity of orders, adopted by, pursuant to, or under one or more of the foregoing, enumerated in (a) and (b) above.

That such Federal questions were amplified and enlarged by filings by various of the parties, including amended and supplemental pleadings subsequent to the mandate of the United States Supreme Court pursuant to its opinion in *Fahey v. Mallonee*, 332 U. S. 258. [19757]

3. The Court also has original jurisdiction because of the following interpleaders, or bills in the nature of interpleader:

(a) Title Service Company filed, in **June, 1946**, depositing notes and deeds of trust with an aggregate value of approximately \$800,000.00 into the Registry of the Court, and likewise interpleading the legal titles to several thousands of parcels of real property conveyed to it as security for notes and deeds of trust aggregating a total of approximately \$12,000,000.00.

(b) The deposit in Court by defendant and cross-defendant Robert H. Wallis of a \$50,000.00 Cashier's check made payable to him for attorneys' fees and expenses for the defense of said association from seizure and threatened confiscation.

(c) The sum of approximately \$1,500,000.00 in-

terplead into the Registry of this Court by the approximately 50 separate interventions and interpleaders by the borrowers and homeowners thereby clearing title to approximately 400 homes together with the notes and deeds of trust deposited with the Clerk of the Court, pursuant to the approximately 50 orders of Court in connection with such interventions and interpleaders.

(d) The \$6,300,000.00 evidenced by four notes deposited pursuant to the order of this Court of March 31, 1948, which said notes were executed by defendant Ammann in favor of said San Francisco Bank.

(e) The \$5,300,000.00 in face value of [19758] U. S. Government Bonds with attached coupons uncashed representing an additional several hundred thousand dollars in accrued interest thereon.

(f) The sum of \$55,485.25 deposited in the Registry of this Court by said association in May of 1949 as disputed premiums claimed by defendant Federal Savings and Loan Insurance Corporation claimed to be due it upon account of the insurance by it of the accounts in deposit of said association.

(g) The sum of \$18,503.52 rent interplead by defendant and cross-claimant George Turner in connection with rental on his lease of the association owned premises, hotel, etc., a subject of dispute and litigation and attempted cancellations of said lease by various of the parties hereto including said defendant Ammann as purported conservator of said association.

4. That the court concludes as a matter of law that the jurisdiction of this court attached with relation to said several various interpleaders and bills in the nature of interpleader and continues until final adjudication of the right of the various contending parties, concerning each and all of said property, money, claims, and obligations, duties, instruments, transactions, and occurrences related thereto.

5. That these consolidated actions seek determination of claims to, and the removal of liens and clouds upon specific real and personal property, physically located either within the territorial boundaries of the district of this United States Court or within the State of California or both. That this court has jurisdiction over such property and all parties concerned with [19759] said property, its title, ownership, possession or incidents.

6. That this Court had, and still has (1) jurisdiction under the Administrative Procedure Act and (2) plenary jurisdiction at law and in equity for determination of any and all issues joined by the pleadings herein, including, among other things, but not limited to, the following:

A. Administrative Orders of the Home Loan Bank Board:

- (a) Order No. 5082;
- (b) Order No. 5083;
- (c) Order No. 5084.

All dated March 29, 1946, concerning the claimed

liquidation and dissolution of the Los Angeles Bank, the creation of the San Francisco Bank, and other things therein set forth.

(d) Order of the Home Loan Bank Board No. 5254, of May 20, 1946, providing for the appointment of a conservator for said Long Beach Association.

(e) Order No. 388 of the Home Loan Bank Board, of January 17, 1948, providing among other things for the restoration of said Association and its assets and properties to said Association from said conservator.

B. Regulations or Other Actions of Home Loan Bank Board:

(f) Various rules and regulations contended to be invalid or inapplicable to said Long Beach Association.

(g) The charter of said Association.

7. That this Court having acquired jurisdiction, has the inherent power to make all necessary and appropriate orders to insure due process in the administration of justice and to facilitate full and complete hearings on the merits by [19760] litigants through their counsel. That such due process and full hearings require participation of counsel for the litigants for adequate presentation of the merits to the courts for consideration.

8. That through the determination in the previous orders of this Court, having been or become final by failure to appeal therefrom, or by dismissal

of appeals, they have become the law of this case, including the finding that this Court has jurisdiction of the parties and of the subject matter.

That the matters and persons concerned in this litigation and in Home Loan Bank Board Order No. 2015 and in proceedings which might be had thereunder, are overlapping, coincidental and mutually inter-related. The decision of one or more of the issues in either, likewise involves a decision of one or more of the issues in both said order No. 2015 and this litigation. This litigation and any proceedings which might be had under said Order No. 2015 involve the determination of common questions of law and of fact.

9. That defendants Home Loan Bank Board, et al., have made general appearances in this action, have sought and obtained affirmative relief from this Court, and have submitted to the jurisdiction of this Court. That previous orders of this Court have established that such general appearance and submission to the jurisdiction of this Court have been the subject of orders of this Court which orders have become final from lapse of time for appeal therefrom.

10. The general equity jurisdiction of this Court includes jurisdiction to decide any and all issues in these actions which have heretofore been consolidated for all purposes.

11. That in this case and consolidated actions, are two or more class actions, one a class action by Mallonee and others, as plaintiffs on behalf of all

the shareholders of the Long Beach Federal Savings and Loan Association; and the second cause of action, in consolidated case No. 5678-PH, is a class action on [19761] behalf of the stockholders of the Federal Home Loan Bank of Los Angeles; as to the motions to dissolve the San Francisco Bank, pending and not yet acted upon, it is asserted on behalf of movants to be a class action on the part and on behalf of all of the stockholders of said San Francisco Bank. [19762]

ORDER

Wherefore, good cause appearing,

It Is Ordered, Adjudged and Decreed that the clerk of this court be, and he hereby is, directed and required to pay forthwith, out of funds and moneys heretofore deposited and now on deposit in the Registry of the court in the above-entitled consolidated actions:

(a) The sum of \$67,500 to Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., as and for fees on account for services heretofore rendered as hereinabove found;

(b) The sum of \$7,500 to W. I. Gilbert, Jr., Esq., as and for fees on account for services heretofore rendered as hereinabove found.

The Court hereby specifically reserves power and jurisdiction to hear and determine in adversary proceedings or otherwise, any and all petitions and motions for determination, fixing, allowance, allocation, assessment, or apportionment, of attorneys'

fees, costs, and/or expenses, for or against any or all of the parties as in its discretion it may deem advisable or appropriate; except it is further ordered, that the amounts ordered hereby paid generally from the funds in the Registry of the Court are not by the terms of this Order, imposed, allocated or assessed upon or against any specific party or parties, fund or funds, provided, however, that it is hereby determined and ordered that the amounts, or any part thereof, herein allowed and ordered paid from said funds shall never be allocated against or imposed upon funds or assets owned by or belonging to the Long Beach Federal Savings and Loan Association, or any of its shareholders, members, or stockholders, either individually, or as an association, except as such association shall be required to bear as a member-shareholder only of a Federal Home Loan Bank. The intention being that the services for which fees are herein allowed are primarily for the benefit of said Los Angeles Bank and its association [19763] member-shareholders as distinguished from the Long Beach Association and other parties as separate entities or parties.

It is further ordered that Long Beach Association shall not at any time be required to deposit any additional money or property in court in these consolidated actions upon or because of the payment of all or any portion of the sums herein ordered and directed to be paid.

All matters and items not expressly herein allowed, disallowed or otherwise passed upon, are

continued submitted, pending the further order and determination of this Court.

Dated: This 19th day of June, 1950.

/s/ PEIRSON M. HALL,
Judge.

Judgment entered June 19, 1950.

[Endorsed]: Filed June 19, 1950. [19764]

PORTIONS OF PROPOSED FINDINGS OF
FACT IN RE ATTORNEYS' FEES NOT
ADOPTED BY DISTRICT COURT

6/19/50

The attached pages have been rewritten but should remain in files as showing them as originally submitted.

/s/ PEIRSON M. HALL,
Judge. [19733]

Federal Savings and Loan Association of Wilmington filed herein on February 10, 1950; reference to each of said orders is hereby made for further specification.

3. That although due notice was given to each Association and person who could possibly be interested in the disposition of any money, either in court or in the hands of the San Francisco Bank, no person or Association so notified, or otherwise, has appeared to enter or make any objection or

protest concerning the disposition of such funds, save and except those actually present in court through their counsel, to wit: San Francisco Bank, Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann, and Federal Savings and Loan Insurance Corporation.

4. That the above actions, entitled Mallonee, et al., vs. Fahey, et al., No. 5421-PH and Los Angeles Bank, et al., vs. San Francisco Bank, et al., No. 5678-PH(WM) have heretofore been ordered consolidated for all purposes.

5. That said actions were and each of them was commenced and at all times since have been and now are being prosecuted and maintained by the plaintiffs therein, and each of them, through their respective counsel of record, in good faith and on reasonable grounds. That the cross-claim of Federal Home Loan Bank of Los Angeles, in action No. 5421-PH, was filed and at all times since has been and now is, being prosecuted and maintained in good faith and on reasonable grounds. That all other pleadings filed and appearances made by either said plaintiff Bank or plaintiff Associations, in either or both of said consolidated actions, were filed and made, and all proceedings had in each of said actions, on the part of either of said parties, have been carried on, and are now being carried on by said parties, through their [19734] reason that settlement negotiations were being discussed and said negotiations proceeded actively from Decem-

ber, 1948, until on or about the first part of October, 1949. That Attorney Peyton Ford, the Assistant to the Attorney General of the United States, as attorney for defendants, Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, John H. Fahey, A. V. Ammann and Federal Savings and Loan Insurance Corporation, on behalf of certain defendants wrote and caused to be filed in the record a certain letter and which said letter was relied upon by counsel and the court and which stated, in part, as follows:

“(2) Following the suggestion of the court, one-third of the amount awarded by the court in its decision of April 1st shall be paid now on proper order of the court (less deduction of \$50,000.00 previously paid, as provided in presently proposed Order), regardless of the outcome of negotiations for settlement; the said stipulation and award shall be vacated and any further attorneys’ fees shall be judicially determined in adversary proceedings at the conclusion of negotiations for settlement, if agreement thereon be reached, or in the litigation, if such there be, or * * *”

That said letter was written in connection with motions for allowance of attorneys’ fees to other counsel in this litigation and which were pending during the settlement negotiations.

13. That in prior proceedings during the approximate four years in which these cases have been pending before this court and/or the United States

Circuit Court of Appeals and/or United States Supreme Court, there have been many hearings at which testimony was taken and evidence introduced. That such hearings resulted in orders, injunctions and judgments which orders, injunctions and judgments contained various Findings of Facts, many of which have become final by expiration and lapse for the time of appeal or review thereof and as to the matters and [19735] things therein covered are *res adjudicata*. That among other things recited in one or more of said orders heretofore made by this court it has been held by this court that it has jurisdiction of the parties and subject matter of the litigation from certain of which orders so holding appeals were taken by the Home Loan Bank Board and/or its agents, and thereafter dismissed. That this court has jurisdiction over the parties and subject matter of the within action.

14. O'Melveny and Myers and Richard Fitzpatrick have rendered legal services in said consolidated action for and on behalf and for the benefit of and as counsel of record for Federal Home Loan Bank of Los Angeles, and the parties plaintiff in Action No. 5678-PH(WM) other than said Los Angeles Bank in substance, manner and form as is averred in detail in that certain affidavit of Pierce Works and John Whyte filed herein on or about January 6, 1949, in that certain affidavit of Paul Fussell and John Whyte filed herein on or about July 8, 1949, in that certain affidavit of Paul Fussell filed on or about April 7, 1950; and in those

three certain affidavits of Richard Fitzpatrick filed respectively on January 6, 1949, July 8, 1949, and April 7, 1950. All averments of fact with reference to the rendition of said services have been admitted. For that reason no detailed findings thereon are herein made, but reference is had to said affidavits and the evidence herein for further particulars. In this connection the court further finds that on or about August 22, 1949, W. I. Gilbert, Jr., was substituted as counsel of record for First Federal Savings and Loan Association of Wilmington in the place and stead of O'Melveny and * * * [19736]

Order

Wherefore, good cause appearing,

It Is Ordered, Adjudged and Decreed that the clerk of this court be, and he hereby is, directed and required to pay forthwith, out of funds and moneys heretofore deposited and now on deposit in the Registry of the court in the above-entitled consolidated actions:

(a) The sum of \$67,500 to Messrs. O'Melveny & Myers and Richard Fitzpatrick, Esq., as and for fees on account for services heretofore rendered as hereinabove found;

(b) The sum of \$7,500 to W. I. Gilbert, Jr., Esq., as and for fees on account for services heretofore rendered as hereinabove found.

It is a condition of this order that no part of either of said sums shall be assessed ultimately against Long Beach Federal Association or its assets and that if, directly or indirectly by reason

of this order or by reason of the payment of the sums of money in and by this order directed to be paid the amount of money on deposit in the Registry of this court and belonging to said Long Beach Association shall at any time become less than a sufficient amount to act as full and adequate security for the notes of said Long Beach Association on deposit in said Registry, then and in that event said Long Beach Association shall not be ordered or directed to deposit additional security to replenish such deficiency.

The Court hereby reserves power to make such further determinations, and orders of allowances or disallowances of such matters and items with reference to attorneys' fees and costs and expenses of this litigation as it may hereafter determine to [19737] be meet and just.

Notwithstanding the foregoing reservation as to further or additional allowances upon account of attorneys' fees, expenses and costs, the sums herein ordered paid upon account of allowances of attorneys' fees are a final judgment of this Court and subject to appeal as such. The Court hereby expressly determines that there is no just reason for delay in decision of the matters herein contained and expressly directs the entry of the judgment contained herein.

Dated: This day of, 1950.

.....,

Judge.

Approved as to form this day of,
1950.

WESTOVER AND SMITH,

By,
Attorneys for Plaintiffs Mallonee, et al., in Civil
Action No. 5421-PH.

CHARLES K. CHAPMAN,
ESQ.,

By,
Attorney for Defendant, Third-Party Plaintiff and
Cross-Claimant, Long Beach Federal Savings
and Loan Association, in Civil Action No.
5421-PH.

W. I. GILBERT, JR., ESQ.,

By,
Attorney for Plaintiff, First Federal Savings and
Loan Association of Wilmington, an Incorporated
Association, in Civil Action No. 5678-
PH(WM).

BISHOP AND HOFFMAN, .
IRVING G. BISHOP, ESQ.,
PHILIP H. ANGELL, ESQ.,
VERNE DUSENBERY, ESQ.,

By,
Attorneys for Defendant, Federal Home Loan
Bank of San Francisco, in Civil Action No.
5678-PH (WM), and Third-Party Defendant
and Cross-Defendant in Civil Action No.
5421-PH.

LYMAN B. SUTTER, ESQ.,

By

Attorney for Defendant and Cross-Claimant, Title
Service Company, in Civil Action No. [19738]
5421-PH.

RICHARD FITZPATRICK,
ESQ.,

O'MELVENY & MYERS,

PIERCE WORKS, ESQ.,

JOHN WHYTE, ESQ.,

By

Attorneys for Plaintiffs Other Than First Federal
Savings and Loan Association of Wilmington,
an Incorporated Association, in Civil Action
No. 5678-PH(WM) and Defendant, Third-
Party Defendant, Cross-Claimant and Cross-
Defendant, Federal Home Loan Bank of Los
Angeles, in Civil Action No. 5421-PH.

RAYMOND TREMAINE, ESQ.,

By

Attorney for Defendant and Cross-Claimant, Robert
Wallis, in Civil Action No. 5421-PH.

ERNEST A. TOLIN, ESQ.,
United States Attorney,

PAUL FITTING, ESQ.,
Assistant U. S. Attorney,

By,

Attorneys for Defendant Ammann, Individually
and as Conservator, in Civil Action No. 5421-
PH, and John H. Fahey, Individually, De-
fendant in Civil Action No. 5678-PH(WM),
and John H. Fahey, Individually and as Com-
missioner, Defendant and Cross-Defendant in
Civil Action No. 5421-PH. [19739]

At a stated term, to wit: The February Term,
A.D. 1950, of the District Court of the United
States of America, within and for the Central Divi-
sion of the Southern District of California, held
at the Court Room thereof, in the City of Los An-
geles on Monday, the 19th day of June, in the year
of our Lord one thousand nine hundred and fifty.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

For hearing on (1) report of Ronald Walker,
Special Master, as to how inspection of San Fran-
cisco Bank is progressing, pursuant to order there-
for granted on Dec. 8, 1948, and (2) objections to

findings of fact and conclusions of law, and application for order staying payment of attorneys' fees on account; Wyckoff Westover, Esq., appearing as counsel for plaintiffs and Shareholders' Protective Committee; W. I. Gilbert, Jr., Esq., appearing as counsel for First Federal Savings & Loan Assoc., Wilmington; Chas. K. Chapman, Esq., appearing as counsel for defendant Long Beach Federal Savings & Loan Assoc.; Pierce Works, Esq., appearing as counsel for defendant Federal Home Loan Bank of Los Angeles; Irving Bishop and P. N. Angell, Esqs., appearing as counsel for defendants Federal Home Loan Bank of San Francisco; Paul Fitting, Ass't U. S. Att'y, appearing as counsel for Federal Home Loan Bank Board, John H. Fahey, and A. V. Ammann; and Ronald Walker, Special Master, present;

Court orders that hearing on (1) report of Ronald Walker, Special Master, etc., is continued to July 24, 1950, 10 a.m.

Court hears counsel re (2) objections, and settled findings of fact and conclusions of law and order re allowance of attorneys' fees on account which are filed. [19772]

Court orders that ex parte application for staying payment of attorneys' fees on account is denied, except that stay is hereby granted to 5 p.m., June 29, 1950, on, or before which time notice of appeal and application for stay be filed, and, if filed, that further stay is granted until the Court of Appeals either grants a stay pending its decision, or denies same. [19773]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that defendants, cross-defendants, third-party defendants, and defendants in intervention, as the case may be, Home Loan Bank Board, William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann, and George K. Bramley, hereby appeal to the Court of Appeals for the Ninth Circuit from the "Findings of Fact, [19775] Conclusions of Law, and Order Re Allowance of Attorneys' Fees on Account," dated and filed in the above-captioned actions on June 19, 1950, and entered on June 19, 1950, in Judgment Book 66 at pages 524 through 545, both inclusive.

Dated: June 20, 1950.

ERNEST A. TOLIN,

United States Attorney,

CLYDE C. DOWNING, and

PAUL FITTING,

Assistant U. S. Attorneys,

By /s/ PAUL FITTING,

Attorneys for Home Loan Bank Board, William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann and George K. Bramley.

[Endorsed]: Filed June 20, 1950. [19776]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Federal Home Loan Bank of San Francisco, sometimes referred to in this consolidated action as Federal Home Loan Bank of Portland, Defendant, Cross-Defendant, and Third-Party Defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from [19777] the "Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' Fees on Account," dated and filed in the above-captioned actions on June 19, 1950, and entered on June 19, 1950, in Judgment Book 66 at pages 524 through 545, both inclusive.

Dated: June 20, 1950.

/s/ VERNE DUSENBERY,

/s/ PHILIP H. ANGELL,

/s/ IRVING BISHOP,

/s/ SYLVESTER HOFFMAN,

Attorneys for Defendant, Cross-Defendant and
Third-Party Defendant Federal Home Loan
Bank of San Francisco.

[Endorsed]: Filed June 20, 1950. [19778]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Appellant Home Loan Bank of San Francisco hereby designates to be contained in the Record on Appeal to the United States Court of Appeals for the Ninth Circuit from the “Findings of Fact, Conclusions of Law, and Order Re Allowance [19779] of Attorneys’ Fees on Account,” dated and filed in the above-captioned actions on June 19, 1950, and entered on June 19, 1950, in Judgment Book 66 at pages 524 through 545, both inclusive, all of the record, proceedings, and evidence in the above consolidated causes.

Dated: June 21, 1950.

/s/ VERNE DUSENBERY,

/s/ PHILIP H. ANGELL,

/s/ IRVING BISHOP,

/s/ SYLVESTER HOFFMAN,

Attorneys for Defendant, Cross-Defendant, and
Third Party Defendant Federal Home Loan
Bank of San Francisco.

[Endorsed]: Filed June 21, 1950. [19780]

[Title of District Court and Cause.]

ANSWER OF A. V. AMMANN AND GEORGE
K. BRAMLEY TO FIFTH SUPPLE-
MENTAL CROSS-CLAIM IN INTER-
PLEADER OF TITLE SERVICE COM-
PANY

Come now the defendants, A. V. Ammann and George K. Bramley, and file this their answer to the Fifth Supplemental Cross-claim in Interpleader of Title Service Company and state:

First Defense

I.

The Fifth Supplemental Cross-claim in Interpleader of Title Service [19786] Company fails to state a claim upon which relief can be granted.

Second Defense

I.

These defendants incorporate as if the same were a part hereof all the denials and statements in the Separate Answer of A. V. Ammann to Cross-claim in Interpleader of Title Service Company and their answers, or the answers of either of them, to the plaintiffs' First Amended and Supplemental Complaint, to the Amended Cross-claim and Supplemental Cross-claim of Defendant Long Beach Federal Savings and Loan Association to the Third Party Cross-claim of the Federal Home Loan Bank of Los Angeles, and to the Supplemental Cross-

claim in Interpleader, the Second Supplemental Cross-Claim in Interpleader, the Third Supplemental Cross-claim in Interpleader, and the Fourth Supplemental Cross-claim in Interpleader of the Title Service Company, all in the above-entitled actions.

II.

These defendants state that from May 20, 1946, on which date he was so appointed by the said Federal Home Loan Bank Administration, to January 24, 1948, upon which date he was removed by order of this Court, excepting October 1 and 2, 1946, defendant A. V. Ammann was duly appointed and acting conservator for the Long Beach Federal Savings and Loan Association.

III.

These defendants deny that any of the aforesaid interpleaders were necessary or proper.

IV.

These defendants state that the defendant A. V. Ammann does not and never has asserted any claim adverse or contrary to the Long Beach Federal Savings and Loan Association. These defendants state that during the time he was such conservator the said A. V. Ammann performed the functions and duties of the office of said conservator but that since January 24, 1948, he never has been or claimed to be conservator nor claimed, asserted, or exercised any right or power in connection with any asset or property of the [19787] Long Beach Federal Savings and Loan Association.

V.

These defendants are informed and believe and therefore state the facts to be, with respect to the said note and deed of trust held by cross-defendant Lillian A. Coggsell, as follows:

(1) In September, 1946, the said Lillian A. Coggsell advised an employee of the Long Beach Federal Savings and Loan Association at the offices of the said Association that she held a first lien on the property described in the Fifth Supplemental Cross-claim in Interpleader of Title Service Company; that upon inquiry by the employee of the Long Beach Federal Savings and Loan Association at that time it was determined that the lien of the said Lillian A. Coggsell was inferior to the lien of the Association; that later in the same month the said Lillian A. Coggsell came to the offices of said Association and paid off in full the loan held by the Association on said property; that accordingly the Association delivered to the said Lillian A. Coggsell the original deed of trust, the original deed of trust note perforated with "Paid" stamp and executed request for reconveyance, and a fire insurance policy of the Merchants' and Manufacturers Insurance Company; that the said Lillian A. Coggsell acknowledged receipt of these documents on a copy of a letter addressed to her by the Association; that the records of the Association indicate that before the appointment of the conservator the Association had requested the trustee to institute foreclosure proceedings; that on or about October

8, 1946, the attorney for the said Lillian A. Coggs-well wrote to the Long Beach Federal Savings and Loan Association that it had been the intention of the said Lillian A. Coggs-well to take an assignment of the note and deed of trust rather than to repay the said loan; that on [19788] or about October 10, 1946, the said attorney for the said Lillian A. Coggs-well returned the documents given on or about September 27, 1946, to the said Lillian A. Coggs-well and requested that the Association give the said Lillian A. Coggs-well an assignment of these documents in order that she might proceed to collect the balance of the money due on the said loan or fore-close the deed of trust if that became necessary; and that in accordance with this request the Association assigned the loan to the said Lillian A. Coggs-well without recourse to it.

(2) That the books and records of the Long Beach Federal Savings and Loan Association accurately reflect the aforesaid transaction, and that the said books and records, and all documents received by the Association during the period of the conservatorship properly retainable by it were delivered pursuant to the order of this Court to the custody of those persons designated by the Court on or about January 24, 1948, and are incorporated in and are a part of the Accounting of the defendant A. V. Ammann furnished pursuant to the order of this Court.

VI.

Except as specifically admitted herein, these de-

defendants deny each and every allegation of said Fifth Supplemental Cross-claim in Interpleader.

Third Defense

By way of a further and separate defense these defendants state on information and belief that the Fifth Supplemental Cross-claim in Interpleader of Title Service Company is not filed in good faith and that no bona fide controversy exists with respect to the aforesaid transactions.

* * *

Wherefore, these defendants pray that the Fifth Supplemental Cross-claim in Interpleader of Title Service Company be dismissed, that these defendants recover their costs and disbursements herein and for [19789] such other and further relief as may be proper in the premises.

Date June 23, 1950.

ERNEST A. TOLIN,
United States Attorney,

By /s/ PAUL FITTING,
Assistant U. S. Attorney, Attorneys for Defendants
A. V. Ammann and George K. Bramley.

District of Columbia,
City of Washington—ss.

A. V. Ammann, being first duly sworn, deposes and says:

That he is the defendant A. V. Ammann in the consolidated actions in the United States District

Court for the Southern District of California, known as *Mallonee, et al. v. Fahey, et al.*, and *Federal Home Loan Bank of Los Angeles, et al. v. Federal Home Loan Bank of Portland, et al.*, Civil Actions 5421-P.H. and 5678-P.H.; that he has read the foregoing Answer and knows the contents thereof and that the same is true to his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes them to be true.

/s/ A. V. AMMANN.

Subscribed and sworn to before me, this 22nd day of June, 1950.

[Seal] /s/ JOSEPHINE A. STERLING,
Notary Public in and for the
District of Columbia.

Serial A 5758

District of Columbia

To All Whom These Presents Shall Come, Greeting:

I Certify That Josephine A. Sterling, whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of deeds or conveyance of lands, tenements, or hereditaments, and other instruments in

writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

In Witness Whereof, the Secretary to the Board of Commissioners of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D. C., this 22nd day of June, 1950.

SECRETARY, BOARD OF
COMMISSIONERS.

[D. C. Seal] By /s/ G. H. TURNER,
Asst. Secretary, Board of
Commissioners.

[Endorsed]: Filed June 23, 1950. [19790]

[Title of District Court and Cause.]

ANSWER TO THE FIFTH SUPPLEMENTAL
CROSS-CLAIM IN INTERPLEADER OF
TITLE SERVICE COMPANY

Come now the defendants, Home Loan Bank Board, William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, John H. Fahey, and the Federal Savings and Loan Insurance Corporation, a corporate instrumentality of the United

States wholly owned by the United States, and for their defense to the Fifth Supplemental Cross-claim in Interpleader of the Title Service Company state: [19794]

First Defense

I.

The Home Loan Bank Board is an agency of the United States and the United States has not authorized or consented to suit against it. The Home Loan Bank Board and the United States are indispensable parties to the above-entitled actions and said Cross-claim.

II.

Said Board is an unincorporated body and is not a suable entity.

III.

The official residence of said Board is in the District of Columbia, and for the purposes of this Cross-claim said Board is an inhabitant of the District of Columbia. No service of process was had upon said Board within the State of California.

IV.

The official residences of William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, are in the District of Columbia, and for the purposes of said Cross-claim they are inhabitants of the District of Columbia. The residence of John H. Fahey is in the State of Massachusetts, and for the purposes of said Cross-claim he is an inhabitant of

said State. No one of these defendants is a resident or inhabitant of the State of California. The only attempted service of process on any of these defendants was in the District of Columbia. Service of process was not had upon any of said defendants in the State of California. The Court has not acquired jurisdiction over them and this action cannot be maintained against them in the State of California. These defendants deny that they are subject to the jurisdiction of this Court.

V.

The principal office of the Federal Savings and Loan Insurance Corporation is in the District of Columbia, it maintains no office in the State of California, and there is no officer or agent in California upon whom service of process has been or can be made. The only purported service of process on the Federal Savings and Loan Insurance Corporation has been in [19795] the District of Columbia. The Federal Savings and Loan Insurance Corporation has not been properly served with process.

VI.

Neither the Cross-claim nor the above-entitled actions or any part of them are an action to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the District, nor do they involve any action in interpleader or in the nature of interpleader upon which an order for substituted service may be legally based.

VII.

William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, and John H. Fahey, and each of them are indispensable parties to this action and this Court has no jurisdiction over them or any of them.

Second Defense

I.

These defendants and each of them incorporate by this reference and make a part hereof all the defenses and statements in the answers of the Home Loan Bank Board, William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, and John H. Fahey, and each or any of them, to the plaintiffs' First Amended and Supplemental Complaint, to the Amended Cross-claim and Supplemental Cross-claim of Defendant Long Beach Federal Savings and Loan Association, to the Third Party Cross-claim of the Federal Home Loan Bank of Los Angeles and to the Cross-claim of the Title Service Company, and to the Cross-claim in Interpleader, the Supplemental Cross-claim in Interpleader, the Second Supplemental Cross-claim in Interpleader, the Third Supplemental Cross-claim in Interpleader and the Fourth Supplemental Cross-claim in Interpleader of the Title Service Company, and state that except as related in said answers, and as set forth in this answer, they are without knowledge or information sufficient to form a belief as to the

truth of the material allegations of said Cross-claim of the Title Service Company. [19796]

II.

These defendants state that there never was at any time a seizure of the Long Beach Federal Savings and Loan Association by the Defendant Ammann or by any of these defendants and state the facts to be as set forth in their above-incorporated answers. These defendants further state that on January 24, 1948, the said Ammann was removed as conservator for the Long Beach Federal Savings and Loan Association by order of this Court, and that since said date said Ammann has never had, asserted, or claimed any right or power in connection with the said Long Beach Federal Savings and Loan Association or any of its assets, but that from the date of his appointment on May 20, 1946, to said January 24, 1948, excepting October 1 and 2, 1946, said Ammann was conservator for the Long Beach Federal Savings and Loan Association.

III.

These defendants state that said Fifth Supplemental Cross-claim in Interpleader of Title Service Company and the interpleaders therein referred to are unwarranted, unnecessary and ineffective and are in fact and in law unrelated to the titles to property and not proper interpleaders.

IV.

Except as specifically admitted herein, these de-

defendants deny each and every allegation of said Fifth Supplemental Cross-claim in Interpleader.

Third Defense

I.

The said Fifth Supplemental Cross-claim in Interpleader of Title Service Company fails to state a claim upon which relief can be granted.

Fourth Defense

These defendants and each of them deny that he or it has or ever has had or asserted any claim or right to any fund in this Court or to any property in any way involved in this litigation located within the State of California, or any claim or interest to any property held, owned, or claimed by the Long Beach Federal Savings and Loan Association. [19797]

Wherefore, these defendants pray that the return of service of process upon the defendants, Home Loan Bank Board, William K. Divers, Chairman, J. Alston Adams, Member, and O. K. LaRoque, Member, of the Home Loan Bank Board, John H. Fahey, and the Federal Savings and Loan Insurance Corporation and each of them be quashed, that the Fifth Supplemental Cross-claim in Interpleader of Title Service Company be dismissed, that the defendants recover their costs and disbursements herein and for such other and further relief as may be proper in the premises.

Dated: June 23, 1950.

ERNEST A. TOLIN,

United States Attorney,

PAUL FITTING,

Assistant U. S. Attorney,

By /s/ PAUL FITTING,

Assistant U. S. Attorney, Attorney for Defendants,
Home Loan Bank Board, William K. Divers,
Chairman, J. Alston Adams, Member, and O. K.
LaRoque, Member, of the Home Loan Bank
Board, John H. Fahey, and the Federal Sav-
ings and Loan Insurance Corporation.

[Endorsed]: Filed June 23, 1950. [19798]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

The appellants Home Loan Bank Board, an agency of the executive branch of the Government of the United States, William K. Divers, Chairman and J. Alston Adams and O. K. LaRoque, Members of the Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, a corporate instrumentality of the United States wholly owned by the United States, John H. Fahey, A. V. Ammann, and George K. Bramley hereby designate to be contained in the Record on Appeal to the United States Court of Appeals for the

Ninth Circuit from the "Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' Fees on Account," dated and filed in the above captioned actions on June 19, 1950, and entered on June 19, [19988] 1950 in Judgment Book 66 at pages 524 through 545, both inclusive, all of the record, proceedings and evidence in the above consolidated causes.

Dated: July 21, 1950.

ERNEST A. TOLIN,
United States Attorney,
CLYDE C. DOWNING, and
PAUL FITTING,
Asst. United States Attorneys.

By /s/ PAUL FITTING,
Attorneys for Defendants, Home Loan Bank Board,
Wm. K. Divers, J. Alston Adams, O. K. La-
Roque, Federal Savings and Loan Insurance
Corporation, John H. Fahey, A. V. Ammann
and George K. Bramley.

[Endorsed]: Filed July 21, 1950. [19989]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL

It appearing that the original forty days for filing the record in the below appeal with the Court of Appeals will expire on July 30, 1950, and it further appearing that the Clerk of this Court will not be able to file such record within such time:

It Is Hereby Ordered that the time for filing the record on appeal with the Court of Appeals for the Ninth Circuit in the appeal of the Federal Home Loan Bank of San Francisco and of the Home Loan Bank Board, et al., from the "Findings of Fact, Conclusions of Law, and Order Re Allowance of Attorneys' [19993] Fees on Account," dated and filed in the above captioned actions on June 19, 1950, and entered on June 19, 1950, in Judgment Book 66 at pages 524 through 545, both inclusive, is extended to and including August 12th, 1950.

Dated: 7/25/50.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed July 25, 1950. [19994]

[Title of District Court and Cause.]

ORDER

It appearing that the exhibits described below are needed at the discovery hearings presently in progress before the Special Master of this Court;

It Is Hereby Ordered that photostatic copies may be filed in Court of exhibits 2-27-50-20 through 2-27-50-57, both inclusive, and exhibits 2-27-50-F and 2-27-50-G, and that the originals of said exhibits may be withdrawn from this Court.

Dated: 7/31/1950.

By /s/ PEIRSON M. HALL,

Judge of the United States
District Court.

[Endorsed]: Filed July 31, 1950. [19998]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

February 27, 1950

Appearances:

For Plaintiff and Shareholders Protective Committee:

WESTOVER & SMITH,
1009 Pacific Southwest Building,
Los Angeles, California; by
WYCKOFF WESTOVER, ESQ.

For Defendant and Cross-Claimant Long Beach
Federal Savings & Loan Association:

CHARLES K. CHAPMAN, ESQ.,
17 Ocean Center Building,
Long Beach 2, California.

For Cross-Defendant Federal Home Loan Bank
of San Francisco:

BISHOP & HOFFMAN,
215 West Fifth Street,
Los Angeles 13, California; by
IRVING G. BISHOP, ESQ.; and
PHILIP H. ANGELL, ESQ.,
San Francisco, California; and
VERNE DUSENBERRY, ESQ.,
Portland, Oregon.

For Defendant and Cross-Claimant Federal
Home Loan Bank of Los Angeles:

O'MELVENY & MYERS,

900 Title Insurance Building,
Los Angeles 13, California; by

PIERCE WORKS, ESQ.; and

JOHN WHYTE, ESQ.; and

PAUL FUSSELL, ESQ.; and

RICHARD FITZPATRICK, ESQ.,

1400 Chapman Building,
Los Angeles 14, California.

Appearing Specially for Defendant Ammann,
Individually and as Conservator; and for De-
fendant Fahey, Individually and as Commis-
sioner:

ERNEST A. TOLIN,

United States Attorney,
Los Angeles 12, California; by

PAUL FITTING,

Assistant United States Attorney; and

DONALD B. MacGUINEAS,

Attorney, Department of Justice,
Washington, D. C.; and

WILLIAM F. McKENNA,

Assistant General Counsel,
Federal Home Loan Bank Board,
Washington, D. C.

For First Federal Savings & Loan Association
of Wilmington:

W. I. GILBERT, JR., ESQ.,
939 Rowan Building,
Los Angeles 13, California.

For Defendant and Cross-Claimant Title Serv-
ice Company:

LYMAN B. SUTTER, ESQ.,
512 Jergins Trust Building,
Long Beach 2, California.

For Defendant and Cross-Claimant Wallis:

RAYMOND TREMAINE, ESQ.,
210 West Seventh Street,
Los Angeles 14, California.

Also Present:

RONALD WALKER,
Special Master in Chancery. [3*]

February 27, 1950; 10:00 A.M.

(Other court matters.)

The Court: Mr. Clerk, all of the matters in the
case of Mallonee v. Fahey are put over until 2:00
o'clock.

The court will be in recess until 2:00 o'clock. [6]

* Page numbering appearing at top of page of original Reporter's
Transcript of Record.

February 27, 1950; 2:00 P.M.

The Court: Are there any *ex parte* matters?

The Clerk: Yes, your Honor.

(Other court matters.)

The Court: Very well. Mallonee vs. Fahey.

Mr. Works: The Los Angeles Bank is ready, your Honor, and also the member associations.

The Court: I understand there are three matters on for hearing this afternoon: first, a supplemental petition in connection with the deposit in court of the premium on the Federal Deposit Insurance Corporation.

Mr. Chapman: That is right.

The Court: Are you ready on that?

Mr. Chapman: Ready.

Mr. MacGuineas: Ready.

Mr. Westover: Ready for the plaintiff.

The Court: Second, an application for fees by the attorneys for the Los Angeles Bank, that is, the attorneys in the Los Angeles Bank case now consolidated with the other case, O'Melveny & Myers. And, third, the application for fees of Mr. Gilbert.

Mr. Gilbert: Ready for the First Federal of Wilmington.

The Court: Is everybody ready in everything?

Mr. Tremaine: If the court please, I am engaged in a [7] public utilities commission hearing and I got excused until 2:30. I ask the permission of this court to withdraw. However, I would like to make two short observations before I go.

The Court: Very well.

Mr. Tremaine: As to the application for the deposit of the insurance premiums, I wish to go on record as favoring the same and hoping that the precedent——

The Court: That is on behalf of——

Mr. Tremaine: Robert H. Wallis.

The Court: ——Robert H. Wallis?

Mr. Tremaine: Yes, sir.

As to the matter of fees, I would like to point out, in expressing my favor of the principle of the payment of such that the Home Loan Bank Board's attorneys have miscited the case of Winslow vs. Ferguson, which happens to be one I am rather familiar with, as I was the attorney to whom the payments were made in that case.

In that particular case—and I believe the record shows on page 778—that the fee was paid in two installments. The first portion was paid long before an interlocutory judgment was entered, and that was one of the points on appeal to the Supreme Court of California, and the propriety of the payment prior to the conclusion of the litigation was upheld by the Supreme Court of California. I notice that [8] that case has been cited in Shepard about a hundred times.

That is the only point that I want to make.

The Court: Thank you, and you may be excused.

Mr. Tremaine: Thank you. [9]

* * *

The Court: Perhaps the best thing for me to do is to allow the interpleader and overrule the objection and then if the Federal Deposit Insurance Cor-

poration desires that a portion of the money on deposit in court be withdrawn and paid to them they may make such a motion and notice it.

Mr. MacGuineas: That would make a good procedure.

The Court: Therefore the objections to filing the supplement to the interpleader are denied and the supplement is allowed.

Now the application of fees in the case of Mal-lonee vs. Fahey and others.

Mr. Works: We are ready on that matter, your Honor.

Mr. Chapman: I have a response I would like to serve on counsel.

Mr. Bishop: Your Honor, I have responses of the Federal Home Loan Bank of San Francisco and affidavits to file, today being the last day.

The Court: There were four documents filed on behalf of O'Melveny & Myers and Richard Fitz-Patrick, are there not, that is to say, one petition for the return of moneys advanced, and then there is a supplement to that.

Mr. Works: That is correct. [20]

The Court: And then a petition for fees and a supplement to that.

Mr. Works: That is correct.

The Court: What date was the supplement for petition for fees filed? I have a document filed July 8, 1949, notice of motion for leave to serve supplement to motion for order directing repayment of moneys heretofore advanced by the Shareholders Protective Committee, and attached to that is the

motion for additional attorneys' fees. Very well. I have located the documents in the file. Let me look at them first. (Examining documents.)

What was the date of the order making the allowance last year of attorneys' fees and the final form of stipulation upon it was based?

Mr. Chapman: May 10, 1949, your Honor.

Mr. Westover: I have the order here, your Honor. It was filed May 10.

Mr. Chapman: I would be glad to look for them, your Honor.

The Court: Very well.

And the date of the filing of Mr. Ford's letter.

Mr. Chapman: That was also filed May 10.

The Court: The Home Loan Bank of San Francisco have filed an opposition only to the application of the First Federal Savings & Loan Association of Wilmington? [21]

Mr. Angell: No.

Mr. Bishop: No, they were filed a long time ago. Those are the ones we are filing today within the court's order. The others were filed previously.

The Court: How long ago?

Mr. Angell: About a year ago.

Mr. Gilbert: September 7th or 8th.

The Court: September 1949?

Mr. Gilbert: I believe it was either the 7th or 9th of September of 1949.

Mr. Angell: That is my recollection.

The Court: We will have to go after that file. I thought I had all of the files relating to this matter here.

The Clerk: What day in September do you think?

Mr. Bishop: September 9, 1949 is the date.

Mr. Works: Your Honor, to save time, I understand it is acceptable to all parties if we put on Mr. Morrow for the testimony as to the value of services, and Mr. Gilbert has Mr. Belcher and Mr. Darling here. We would appreciate it if we could follow that procedure, to take the evidence first and then argue the matter afterwards, if that is satisfactory to the court.

The Court: That is all right with me. The trouble of it is, I get a little curiosity now and then when a witness is on the stand and if I read what the parties have said in [22] their pleadings or objections, why I can ask him intelligent questions.

Mr. Works: I merely mention that, your Honor, because I don't understand that the objections go to the rendition or value of the services.

The Court: I had not noticed it in the Government's objection, that there was no objection either to the value of the services, that is, having any value, nor the fact that the services were rendered. There appear to be no factual objections. The Government's objection was based purely on questions of law.

I was not aware that the objection of the Bank had been filed to the application of O'Melveny & Myers and FitzPatrick. I see here their answer in opposition now. Do you raise any question of fact?

Mr. Angell: Not as to the value of the services.

The Court: Or the rendition?

Mr. Angell: Or the rendition.

The Court: Neither their rendition nor their value?

Mr. Works: That is my understanding, your Honor.

Mr. Angell: We raise objection to the allowance of the shareholders' expense items, not the attorneys' fees.

Mr. Bishop: There is a separate petition, your Honor, which you haven't mentioned today.

The Court: Yes, a separate petition to refund amounts [23] which they have expended and the Government objects, I understand, to one phase of it only.

Mr. Angell: Confining our remarks entirely to attorneys' fees, so far as the San Francisco Bank is concerned, we do not question the rendition of the services nor are we questioning the value of the services. There is no specific amount alleged or asked for, so we couldn't question those and, as far as I know, we do not intend to produce any witnesses as to value, and there is no objection to Judge Morrow or any of the other witnesses on that subject being called out of order now, if that is the pleasure of the court.

The Court: Just a moment until I refresh my recollection of Mr. Ford's letter. (Examining document.)

Very well. You may proceed with your witnesses.

Mr. Works: Thank you, your Honor.

Mr. Morrow, please.

HUBERT T. MORROW

called as a witness by and on behalf of the petitioner O'Melveny & Myers and FitzPatrick, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Hubert T. Morrow; M-o-r-r-o-w.

Mr. Works: Your Honor, as a preliminary matter I have prepared a chart here with reference to experience and legal training of the various men in our office who have worked on [24] these matters. It is certified by our office manager and I would personally vouch for its accuracy. It sets forth the date of birth, college attendance, law school attendance, date of admission to practice and, in the case of partners, when they became partners.

The Court: Do you wish to offer that as an exhibit?

Mr. Works: I should like to. Mr. Morrow has had occasion to study this graph.

The Court: In order that it may be formally in the record, I take it that both sides are agreeable to a stipulation that if John Doe—what is the name?

Mr. Works: There are about 15 names, your Honor, if each were called.

The Court: If each attorney on that list were called, that they would testify to that effect concerning the items which you have mentioned.

Mr. Works: Yes, your Honor, and such testimony may have been deemed to have been given.

Mr. MacGuineas: No objection.

(Testimony of Hubert T. Morrow.)

Mr. Angell: So stipulated.

The Court: Very well. That will be Exhibit No. 1. I guess we will have to get some kind of a new system for numbering these exhibits. The clerk tells me in trying to get the record up on appeal in the other case he is in almost inextricable difficulties. I think that the last time we had a [25] hearing we preceded the numbers with a date, did we not?

The Clerk: Yes, your Honor.

The Court: So we will precede these by 2-27-1.

The Clerk: For the plaintiff, your Honor?

The Court: For the petitioner, 2-27-1 for the petitioner O'Melveny & Myers and FitzPatrick.

Mr. Chapman: May I suggest adding the year? We did that in the last two hearings.

The Court: 2-27-50-1.

(The document referred to was received in evidence as Petitioner O'Melveny & Myers and Fitzpatrick Exhibit No. 2-27-50-1.)

(The document referred to is, in words and figures, as follows, to wit:) [26]

PETITIONERS' EXHIBIT No. 2-27-50-1

O'Melveny & Myers Personnel—In re Federal Home Loan Bank Cases

	Birth	College	Law	Admitted	Became Partner
Fussell	1-15-95	California	California	1920	1925
Works	1- 2-96	California	California	1922	1930
Chance	10- 5-06	California	California	1931	1940
Wall	7-28-12	Pomona	Yale	1937	1948
Carman	10- 5-05	Carlton College	Harvard	1930	1940
Whyte	3-11-11	Carlton College	U. of Minn., Minneapolis	1939	
Woolsey	1917	California	U.S.C.	1942	
Deards	4-24-11	Pomona	Loyola	1942	
Deegan	1914	Loyola	Loyola	1941	
Baird	6-27-14	U.C.L.A.	California	1940	
Dunlap	4- 3-18	Michigan	Michigan	1947	
Hamilton	6- 6-18	Nebraska	Harvard	1946	
Cahall	11-21-19	Swarthmore	Harvard	1946	
Forve	1-14-19	Lafayette	Georgetown	1949	
Clad	8-17-18	Dartmouth	Yale	1948	
Rauscher	3-30-21	Vanderbilt	Columbia	Not	
			Yale		

(Signed) Ethel M. Strang, Office Manager.

Subscribed and sworn to before me this 20th day of February, 1950.

(Signed) Ruth Davis.

Notary Public in and for the County of Los Angeles, State of California.

(Testimony of Hubert T. Morrow.)

The Court: Proceed.

Direct Examination

By Mr. Works:

Q. Mr. Morrow, you are, I understand, an attorney at law admitted to practice in all of the courts of the State of California? A. Yes.

Q. When were you admitted to practice, please? A. 1902.

The Court: Mr. Morrow, I think that everybody here in the courtroom, at least anybody with any California experience, would be willing to stipulate to your qualifications——

Mr. Angell: We will so stipulate.

The Court: ——but it may be that this matter may eventually get into the hands of judges who are not acquainted with you, so perhaps it would be better then to put his qualifications in the record.

Mr. Works: Very well, your Honor.

Q. You are a senior member of the firm of Morrow & Trippet at the present time? A. Yes.

Q. And you were associated in partnership for a great many years, were you not, with Judge Finlayson and James Bennett under the firm name of Finlayson, Bennett & Morrow?

A. Yes, sir; for some 20-odd years. [29]

Q. You have been admitted to what courts, Mr. Morrow?

A. In the State courts, of course, and this United States District Court, Circuit Court of Appeals of

(Testimony of Hubert T. Morrow.)

this State and the Supreme Court of the United States.

Q. Is it correct to say that your practice has been mainly concerned with litigation matters?

A. Mostly.

Q. Actual trial and appellate work and other activities connected with that type of activity?

A. Yes.

Q. I wonder if you would state to his Honor the experience that you have had with reference to the matter of fixing and determining attorneys' fees.

A. Well, the ordinary experience a man has of trying to collect his own, is the first and most intimate experience, I would say.

I once delivered an alleged address on the subject in 1923 to the Bar Association, which caused me a good deal of grief thereafter.

I have at times made certain tests of lawyers to determine their views and how nearly they agree. Generally they disagree.

And I have testified a number of times in the courts as to the value of attorney's services, I think always in the State courts, Superior Court; sometimes called by parties and [30] sometimes by judges.

And may I make a remark, because of the remark that was made here today, I do not receive any compensation when I testify as a witness to give my opinion as to the value of services.

The Court: I hope I did not touch you in any

(Testimony of Hubert T. Morrow.)

quick spot by my remark; it was only intended to be facetious.

The Witness: I understand, your Honor, but I just might as well let you know the fact just to straighten the record out. I do not charge anything of course, and I feel as though I am testifying really more for the court than I am for any party.

The Court: I certainly appreciate your being here.

Q. (By Mr. Works): Have you had occasion from time to time, Mr. Morrow, to acquire knowledge as to fees charged by other attorneys, particularly in this community?

A. I have very often.

Q. That runs back to the early days of your practice? A. From the beginning.

Q. Have you had occasion to familiarize yourself with the scope and general——

The Court: How long has that been?

The Witness: I was admitted in 1902. I started practicing in 1902 by myself. [31]

Q. (By Mr. Works): Have you had occasion to familiarize yourself with the scope and general nature of this pending litigation, the litigation embodied in these two consolidated cases?

A. Yes. I haven't read the whole record by any means though.

Q. That is understandable.

A. But I have spent several hours on the record and on the data that was furnished me.

Q. How much time have you spent in familiar-

(Testimony of Hubert T. Morrow.)

izing yourself with this litigation and with the services rendered by Richard FitzPatrick and O'Melveny & Myers in connection with these matters? Can you give us some idea?

A. It would have to be a rough estimate, because I kept no time on the matter, but I would say more than 12 hours.

Q. Have you read the affidavits filed on behalf of the Federal Home Loan Bank of Los Angeles and the five member associations with reference to the current application for attorneys' fees?

A. Yes, sir.

Q. Have you examined the information set forth in the exhibit which has been introduced here today, Exhibit 2-27-50-1?

A. Yes, sir.

Q. Assuming all the facts stated in the affidavits in [32] question to be true, and assuming the data set forth in Exhibit 2-27-50-1 to be true, do you have any opinion at the present time as to the reasonable value of the legal services rendered by Richard Fitzpatrick and O'Melveny & Myers as set forth in such affidavits?

A. I do.

Q. Will you please state that opinion?

A. \$175,000.

Mr. Works: You may cross-examine.

The Court: That is to this date?

The Witness: No, sir, to June 30, 1949, I believe.

Mr. Works: Thank you, your Honor. I would like to correct that.

Q. June 30, 1949, I believe is the date?

(Testimony of Hubert T. Morrow.)

A. Yes.

The Court: Did you not file a supplement to that?

Mr. Works: That is the date the supplement came down, your Honor.

The Court: I thought there was one here just recently.

Mr. Works: Not by us, your Honor.

The Court: This was filed July 8, 1949?

Mr. Works: Yes.

The Court: Very well.

Mr. MacGuineas: May I ask one or two questions, your Honor? [33]

The Court: You may ask as many as you like.

Cross-Examination

By Mr. MacGuineas:

Q. Mr. Morrow, may I ask, in computing the sum of \$175,000, did you figure that as a rate of so much per hour of attorneys' time?

A. No, but I checked it back on that basis.

Q. Would you just briefly state what the results of your check were?

A. Checking it back on an hourly basis?

Q. Yes.

A. You don't mind if I refer to my notes?

Q. Not at all.

A. I am not directly answering your question, but perhaps you would like to know first the basis that I used as well as my check-back, or just the check-back?

(Testimony of Hubert T. Morrow.)

Q. I would be glad to know the basis that you used to arrive at your figure, Mr. Morrow.

A. Yes.

I might say to you I have a note here that you are privileged to look at, that I wrote last night at home to coordinate my ideas, and I perhaps can shorten it by reading portions rather than speaking extemporaneously.

Among others that I considered, I considered these factors: The period involved, which was over three years. It [34] dated from March 29, 1946, as I recall it, to June 30, 1949.

I considered the long-drawn-out litigation and proceedings and the fact that such caused a loss of other business irrespective of the actual hours consumed.

Next I considered this litigation appeared to me to be extremely complicated and unique.

The Court: Are there any other superlatives that you could find in the dictionary? If there are I think you would be justified in applying them.

The Witness: I think I would, your Honor. I tried to be modest in this statement.

Next I considered that the attorneys on the other side of the case were able and have unlimited means of defense.

Next, that all lawyers involved here in this litigation and concerning whom I am testifying as to the value of their services, are men of the highest ability and experience.

Again that between the lawyers the firm of O'Mel-

(Testimony of Hubert T. Morrow.)

veny & Myers and Mr. FitzPatrick, they possess very special qualifications in various fields of the law that are involved.

Next, the firm of O'Melveny & Myers have an established and highly trained organization which only a few law offices could provide. In fact, that such litigation would disrupt most legal organizations and it might ruin some if they undertook such a litigation.

There is next a definite element of contingency of fee [35] involved.

I next considered that very large interests and amounts are involved here and that the result is very important.

I added in the thought that was always in my mind that when a lawyer dies he leaves nothing but a memory; he doesn't leave anything like a grocery store to be carried on by his widow.

The next think I considered was how much working time a lawyer has in a year.

I figured that a lawyer can devote five days a week and an average of five hours a day to legal work. I know lawyers work very much longer than that, but a man has to keep up with volumes of decisions, opinions, he has to do his general reading, he has to do his portion of charity work, he has to do a lot of work for the State Bar and his local bar. So I figured 365 days, less 52 Sundays, were 313 days, less half Saturdays, which would be 25 days a year, which left 288 days; take off 20 days for vacation, and that is 268 days. I took off 8

(Testimony of Hubert T. Morrow.)

days for illness and had 260 working days left and figured 1300 working hours a year.

I next figured how much gross income should lawyers of the standing of the partners of O'Melveny & Myers and Mr. Richard FitzPatrick be entitled to, roughly speaking, because that is anybody's estimate. I figured a basis of \$60,000 gross for any man, any partner. [36]

Overhead will absorb at least a third, leaving not over \$40,000 net before income taxes. I think that is a conservative figure and probably less than the average earnings of the lawyers involved, but it is a fairly good basis.

On account of the very large and old and skilled legal organization of O'Melveny & Myers, which facilitates the handling of such litigation, I feel that really I should use a higher figure for their contribution to the litigation than that of Mr. FitzPatrick perhaps. But for convenience I considered the partners' hours and Mr. FitzPatrick's hours on the same basis. That is no criticism of one man as against the other, but the fact that a large organization, with all its facilities, very often furnishes a larger part. But I have treated them as the same.

The total hours of O'Melveny & Myers and Mr. FitzPatrick——

The Court: That is, the partners?

The Witness: The partners; yes, sir.

The Court: There are five partners and Mr. FitzPatrick?

(Testimony of Hubert T. Morrow.)

The Witness: Yes, sir.

The Court: That will be six, that is the total hours of the six?

The Witness: Yes, sir, eliminating all their lawyers assistants, equals 2460 hours, as I have figured it, and I think I figured it carefully. That is one year and approximately [37] eleven months figured as solid time. That is 1300 hours for one year, plus 1160 hours—1160 hours is a little less than eleven months; that would be 1188 hours really, but I actually used the figure of 1160 hours—and that gave a total of \$60,000, plus \$53,000-odd, or a total of \$113,537.80.

I added to that the time of John Whyte.

The Court: Just a moment. That is 2460 hours, or one year?

The Witness: One year and approximately eleven months.

The Court: At \$60,000 a year?

The Witness: At \$60,000 a year, yes, sir, gross. And I gave the total \$113,537, and I stuck the 80 cents on but I dropped it later.

The Court: That is to say, that that would be one partner working one year and eleven months?

The Witness: Yes, sir, that is what that would be.

The Court: Very well.

The Witness: I added to that time the time of John Whyte, which was 860 hours. I put a value on that of \$30 per hour, which I am inclined to think is low, it is not high, and that came to \$25,-

(Testimony of Hubert T. Morrow.)

800, which added to the \$113,537 previously mentioned gave me \$139,337.

To that I added the time of all lawyer assistants. Of course that doesn't cover any expenses and all that, but the lawyer assistants, which was 406 hours I believe at \$10 an [38] hour, which is low. I put it low purposely. We in our office carry that item at a higher figure in important cases. We carry it at \$15, but anyway I put it at \$10. And that amounted to \$4060, which with the last figure above I mentioned gives a total of \$143,397.

But I figured in figuring that I figured it on the basis of a cash fee, an assured fee, but here there is a distinct element of contingency, and there apparently was from the beginning, a consideration in my opinion that should be given to that. Therefore I added one-fourth of the estimated cash basis fee, which was \$35,849, and it brought the total fee up to \$179,291 as a proper fee.

However, there are tenuous things involved, such as the weight to be given to a contingency which must always be considered, certainly in figuring a fee, the extent of that contingency, so I just called it a round figure of \$175,000.

I now come directly to your answer. I thought that that might be helpful, Mr. MacGuineas, to you to have the whole picture.

Mr. MacGuineas: As far as I am concerned, you have answered the question.

The Witness: I have a little more that is more direct to your question.

(Testimony of Hubert T. Morrow.)

I personally often use what I call a sight check-back method based upon somewhat arbitrary estimation of per hour [39] fees, which is a method we are sometimes compelled to use in certain types of litigation and with certain clients, and there is a difference among lawyers as to per diem charges. Personally I used my own view of a routine matter that would not be in anywise as extensive or as difficult as this. I used what I would call a common figure.

This check-back method, to my mind, does not truly reflect proper or adequate fees, but it is a safeguard for a man to see that he is somewhere within reason in his estimation because we often make estimates of fees I think by intuition and, generally speaking, we are about as close as all the figuring you can do.

I used the figure of \$50 an hour for each partner and for Mr. FitzPatrick. I think probably without drawing any invidious distinction between Mr. FitzPatrick and the partners of O'Melveny & Myers, nevertheless from what I have said before as to their having, O'Melveny & Myers having, a well-built-up organization, with many, many facilities that aids them in doing work a single man can't do with a lesser organization, that I am sure \$50 an hour for Mr. FitzPatrick is conservative and is more than conservative, in my opinion, to allow only the same figure for O'Melveny & Myers' partners. But I have used that for purposes of consistency.

(Testimony of Hubert T. Morrow.)

The 2460 hours at \$50 an hour figured \$123,000. Using the same system as above as to those who were not partners, add to [40] that Mr. Whyte's 860 hours at \$30 per hour, or \$25,800 added, plus the other lawyer assistants, a total of 408 hours at \$10 an hour, namely, \$4080, I arrived at a total of \$152,880.

That fairly well compares with and is larger than the figure of \$143,397 which I arrived at by the other method.

I will not read you the rest of it, but you can read it if you want to. There are some of my observations to myself, as I recall it.

Mr. MacGuineas: I think you have answered the question very thoroughly, Mr. Morrow.

The Court: Do you think that it should be read in order that the court may better understand your testimony?

The Witness: Let me see what it was first, your Honor, before I answer. They might be a little conceited sounding. I will go ahead and read them.

Perhaps others would consider my estimate too low. You understand I just wrote this for myself and I am using it because it saves time for me to tell all this and use a blackboard, which might take an hour and a half.

I myself feel as fair and conservative but certainly not in the least high. Putting myself in the place of the lawyers here claiming fees, which is a pretty sound way to arrive at a judgment of one's own opinion, I would say I would not knowingly

(Testimony of Hubert T. Morrow.)

get into such litigation without definite assurance of cash payment of a fee for the services here involved in the [41] amount I figured the total fee, with allowance of the contingency factor. Perhaps one would be foolish even then.

Your Honor will see why I would hesitate to read that.

The Court: In the last hearing I asked counsel who were here as witnesses whether or not, if someone would have walked into their office at the time this litigation began, and said, "Well, here is some litigation," and described generally its course, without any idea how complicated or involved it would be at the time, and said, "Well, you are going to be in it for the next three or four years, or maybe from now on, we do not know whether you will ever get any money or not," would you have taken that litigation on the basis of that statement?

The Witness: No, sir, I would not. I could not have. It would ruin a man's practice.

The Court: Do you know what actually is charged by O'Melveny & Myers for partners' time?

The Witness: No, sir, I do not.

The Court: Do you know what actually is charged by that firm of lawyers' time who are not partners? I think you referred to Mr. Whyte's time.

The Witness: John Whyte?

The Court: Yes. I mean the other lawyers here.

The Witness: No, sir, I do not know.

The Court: You do not? [42]

(Testimony of Hubert T. Morrow.)

The Witness: No.

The Court: In your office you charge \$15 an hour for that work?

The Witness: Well, that varies, your Honor.

The Court: It varies as to the ability of the client to pay?

The Witness: Yes, sir, and the amount involved and the extent of the problem. My partner, Mr. Trippet, disagrees with me entirely. I often, and did only last week, cut the figure down in a certain case.

The Court: But does not each fee vary with the ability to pay and the amount involved and the intricacy or involvement of the case as well as the time involved?

The Witness: To a certain extent. As a matter of fact, in the canon of ethics of the American Bar Association there are stated the criteria, very well stated, as well as in any authority, the criteria to be taken into consideration. I happen to have that with me. It is Rule 12 of the American Bar Association, if your Honor wishes to look at it.

The Court: Is it long?

The Witness: It is about 20 lines.

The Court: Very well. Read it.

The Witness: "In determining the amount of fee it is proper to consider:

"1. The time and labor required, the [43] novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause.

(Testimony of Hubert T. Morrow.)

“2. Whether the acceptance of employment in the particular case will preclude the lawyer’s appearance for others in cases likely to arise out of the transaction and in which there is a reasonable expectation that otherwise he would be employed or will involve the loss of other employment while employed in the particular case for antagonisms with other clients.

“3. The customary charges of the bar for similar services.

“4. The amount involved in the controversy and the benefits resulting to the client for the services.

“5. The contingency or the certainty of the compensation.

“6. The character of the employment, whether casual or for an established or competent client.

“No one of these considerations in itself is controlling, they are merely guides in ascertaining the real value of the services.”

There is also an excellent statement in one of the best cases in the case of *Berry v. Chaplin*, 74 Cal. App. (2d) 669, the opinion of Judge Emmet Wilson, which I will not read, but [44] it is a very clear statement involving the Chaplin fee.

The Court: Let me see it.

(The document referred to was passed to the court.)

The Court: Go ahead and read it.

The Witness: “The compensation of an attorney does not lie in the economic law of supply and

(Testimony of Hubert T. Morrow.)

demand like the fluctuating price of wheat and potatoes. (13) Among the factors to be considered in determining what constitutes a reasonable compensation for an attorney who has rendered services in connection with a legal proceeding are the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded (*City of Los Angeles v. Los Angeles-Inyo Farms Co.*, 134 Cal. App. 268, 276 (25 P. 2d 224)); the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed. (*Palm Springs etc. Co. v. Kieberk Corp.*, 46 Cal. App. 2d 234, 241 (115 P. 2d 548); *Collins v. Welsh*, 2 Cal. App. 2d 103, 110 (37 P. 2d 505).)''

The Court: Have you finished? [45]

Mr. MacGuineas: I have no further questions. Thank you.

The Court: One of the items mentioned in the American Bar Association's canons of ethics was the novelty of the litigation. Do you consider this litigation as presenting novel questions?

The Witness: To me, very. In all my experience I have never seen anything just like it. I was told that the record alone might weigh 150 pounds.

The Court: That was a year ago.

The Witness: To me it is unique and, as your

(Testimony of Hubert T. Morrow.)

Honor said a while ago, could I have thought of some other adjectives or adverbs I would have used them.

I read the case of the statutory 3-judge court opinion, I read Justice Jackson's opinion in the Supreme Court reversing, I read the Home Loan Bank Act of 1933 (I had never read it completely before), I read, not all the briefs, but several of them, and it seems to me that I can't think of any more difficult, more complicated, more unique litigation certainly in all my experience.

The Court: Do you think that you could safely say that it would tax anybody's legal ingenuity to meet the legal problems presented in connection with this situation?

The Witness: To the highest degree. There are all sorts of questions, a basic constitutional question, Section 5(b) of the Home Loan Bank Act, which was a very nice problem. [46]

The Court: Interpleaders, class actions——

The Witness: Yes, sir.

The Court: Government regulations?

The Witness: The only worse thing from that of being a lawyer in this case would be to be the judge of the case, and I am sorry for you.

The Court: This has gotten to be a habit with me. I do not know what is going to happen when the case ends, because as soon as we recess some other case we go to work on this at nights.

Now one other question, Mr. Morrow. You said there was an element of contingency involved here.

(Testimony of Hubert T. Morrow.)

I wonder if you would explain what you mean by that, what you have in mind.

The Witness: What I have in mind is this, that under no circumstances if an award is not made here—and of course that is none of my business at all, as to whether the attorneys are entitled to an award under the law, I know the theory, I have studied it—but if no award is made here then undoubtedly the attorneys will not be able to obtain an adequate fee, cash fee.

The Court: That is, if no award is made to them by this court?

The Witness: That is right; yes, your Honor. And that an award being made, that is a contingency, that is an uncertain quality. [47]

The Court: In all class actions are not such contingencies present?

The Witness: Yes, sir, dependent on the trust fund theory or theory of recovery in a receivership.

The Court: Or in a class action.

The Witness: Or in a class action. There is always a contingency involved.

I look at this as a man going in with his eyes wide open and realizing, perhaps not too well, that he is not going to get a cash fee from his clients, they can't pay it, they couldn't pay it, and that he is running a risk which he ought to be paid for as in any other contingent situation.

The Court: Did you read the affidavits filed in support of Mr. Gilbert's application for fees?

(Testimony of Hubert T. Morrow.)

The Witness: No, sir, I never heard of it until this noontime when I ran into Mr. Frank Belcher in connection with another matter. I didn't know anything about it.

The Court: I do not recall whether or not in connection with your application for fees you set forth the allegations that when the original appropriation for fee was made by the Long Beach Association that the Board caused spot checks to be made. Who prepared that?

Mr. Gilbert: I believe your Honor is referring to mine.

The Court: That is in yours?

Mr. Gilbert: Yes. [48]

The Court: But I saw it in another one. I was not sure whether it was yours that the spot checks were made in on other associations to determine whether or not they likewise were making appropriations.

Mr. Westover: I think in our response it is, your Honor.

The Court: Let me ask Mr. Morrow this: In some of the petitions here on file it is alleged that at the time the Long Beach Federal, on or about the time of the seizure of Los Angeles Bank and subsequent thereto and at about the time the Long Beach Federal board of directors passed a resolution authorizing the appropriation of \$100,000 to oppose the dissolution of the Los Angeles Bank, that the Home Loan Bank Board, consisting of Mr. Fahey at that time, caused spot checks to be made of vari-

(Testimony of Hubert T. Morrow.)

ous associations belonging to the Home Loan Bank system looking solely to whether or not they likewise had appropriated money for counsel fees, and there is also an allegation to the effect in one of the petitions that that was done more or less recently—is that not correct, Mr. Gilbert?

Mr. Gilbert: Yes, it is, your Honor; December 10th, last year.

The Court: December 10, 1949?

Mr. Gilbert: Yes, sir.

The Court: Did you take any such thing as that into consideration in connection with your figures?

The Witness: No, sir, I did not. [49]

The Court: That is to say, whether or not each member of the class themselves could or could not pay the fee?

The Witness: No, sir, I did not take it into consideration. I just took into consideration the fact that to a considerable extent the amount of the fee, a proper fee, would be contingent.

The Court: Very well. Further cross-examination? Mr. Chapman?

Mr. Chapman: Yes, your Honor, if the other defendants are through.

The Court: San Francisco Bank?

Mr. Angell: No cross-examination.

The Court: The other official defendants?

Mr. MacGuineas: No.

The Court: Very well.

(Testimony of Hubert T. Morrow.)

Cross-Examination

By Mr. Chapman:

Q. Mr. Morrow, as one of the attorneys for the Long Beach Association, I was particularly interested in the things you took into consideration in determining the amount of this fee, and I would like to inquire whether or not some of the elements which do not appear to me to be considered by you might not affect the amount that you mentioned.

The risk to the client of confiscation for hiring an attorney and bringing this litigation is one of the burdens upon the attorney in taking on that litigation, is that not [50] correct?

Mr. Angell: Pardon me. Will you read that question back, Mr. Reporter.

(The question referred to was read by the reporter as follows:)

(“Q. The risk to the client of confiscation for hiring an attorney and bringing this litigation is one of the burdens upon the attorney in taking on that litigation, is that not correct?”)

Mr. Angell: If your Honor please, I object to that as incompetent, irrelevant and immaterial, not within any issue in this case, and if Mr. Chapman wants to take the witness stand to testify that is another thing. That is no question, that is a statement.

Mr. Chapman: I would like to be heard on that.

Mr. Angell: I object to it.

Mr. Chapman: We have a response which those

(Testimony of Hubert T. Morrow.)

facts are set forth. They have been undenied in this litigation in many previous verified statements.

The Court: Do you understand the question? Is it clear to you?

The Witness: May I state what I understand it to be? I am not sure I understand the question correctly, but I understand the question to mean that assuming that because this relates to the attorneys for the Los Angeles Bank, assuming [51] that those attorneys advised something that caused or might have affected confiscation of the bank by merging it with the Portland Bank and then turning it into the San Francisco Bank, had I taken that into consideration?

Mr. Chapman: I don't think that is the question, Mr. Morrow.

The Witness: I did not understand the question then.

The Court: The attorneys are appearing as attorneys for a class. They have Section 5 or Section 5(d) associations designated as members of the class of shareholders of the Los Angeles Bank.

The Witness: Yes, sir.

The Court: I think counsel's question is directed to the relationship of the attorney with the members of the class and each one who acted in that respect.

Mr. Chapman: That is correct, your Honor. I think I should amplify the question.

The Court: I think you can make the question a little clearer.

(Testimony of Hubert T. Morrow.)

Q. (By Mr. Chapman): Assume, Mr. Morrow, that an association which had made an appropriation for attorneys' fees was summarily seized, and that one of the grounds for such seizure given by the defendants who made the seizure, was a claimed appropriation by that association of money to attorneys' fees for the [52] defense of the institution, would the attorney bringing action for the six plaintiff associations in the Los Angeles Bank case, after such a seizure of another association, be taking a greater responsibility as an attorney and towards his clients than one engaged in ordinary litigation?

Mr. Bishop: Your Honor, I wish to object on the grounds that Mr. Chapman I don't think has any application for fees here. What difference does it make as to his position on his own allegations what the Long Beach Association does or doesn't do? What risk the attorneys assumed for the Long Beach Association has nothing to do with O'Melveny & Myers and Mr. FitzPatrick's application for fees. I don't see the relevancy of it in any way whatsoever.

The Court: The objection is overruled. It is with relation to the application of O'Melveny & Myers and Mr. FitzPatrick who appear in this class action wherein they originally designated six building and loan associations as the members of the class who were the committee suing for the whole class.

(Testimony of Hubert T. Morrow.)

Did you have an objection, Mr. Angell?

Mr. Angell: Yes, I want to state the full objection.

I object to it on the ground it is incompetent, irrelevant and immaterial, not within any issue presented by the applications pending before the court at this time.

The Court: Overruled. [53]

The Witness: Well, every risk that a lawyer takes he should be paid extra for it. Does that answer it?

Mr. Chapman: That answers it, Mr. Morrow.

Q. Was that one of the risks that you considered in this amount that you had given in your opinion? A. No, I did not.

Mr. Bishop: Just a minute. I object to that. It isn't evident what risk you are talking about.

Mr. Chapman: The one I referred to in the previous question.

The Court: The objection is overruled. Your answer was what?

The Witness: I did not take it into consideration. I might raise the fee a little on account of the risk.

Q. (By Mr. Chapman): Assume that previous applications for attorney's fees had been made in this or consolidated litigation and that the award of a sum on account of such attorney's fees resulted in a writ in the United States Supreme Court against the judge who made such allowance, assume that the writ was denied after which the judge signed the

(Testimony of Hubert T. Morrow.)

order making such allowance, and then an appeal was taken from that order, notwithstanding the denial of the writ, that a stay was sought from the award made after the denial of the writ by the United States Supreme Court, and that stay was likewise argued in the Ninth Circuit Court of [54] Appeals and there denied, and that thereafter the appeal to the Ninth Circuit Court of Appeals was dismissed, would that previous history of litigation over attorneys' fees in your opinion affect the value or be a factor weighing in the amount to be allowed to other attorneys seeking attorneys' fees in the same or similar litigation?

Mr. Angell: Same objection.

The Court: Same ruling.

By that what you are trying to say, is that a factor that if the attorney were allowed a fee he might have to wait a long time for it through successive or several or separate appeals?

Mr. Chapman: Wait half his lifetime, to be exact, your Honor.

The Court: Was that taken into consideration?

The Witness: Is that what your question means?

Mr. Chapman: That is right.

The Witness: I didn't know it, but the answer is, one should take it into consideration.

The Court: Did you in this matter?

The Witness: Yes, sir, I think in my contingency general factor of one-fourth which I added. I may not have made a good estimate when

(Testimony of Hubert T. Morrow.)

I said one-fourth, maybe it should be more or maybe less, but I tried to give consideration to such factors, Mr. Chapman, as you have mentioned. [55]

Q. (By Mr. Chapman): You feel, Mr. Morrow, that your one-fourth allowance for contingency is a sufficient allowance in view of the possibility of never receiving any fee after four years of services?

A. Well, I would say it is low, I say it is a low figure, and I used low figures all the way through to try to act as though I were a referee or not give any benefit to the gentlemen who asked me to testify. Perhaps I am on the low side all the way through, including that element.

The Court: If you do not stay on the low side, I will say this, from this side of the bench, the figures in this litigation get rather startling.

The Witness: Yes, they do.

Q. (By Mr. Chapman): In one of your answers on direct examination, or perhaps it was on cross-examination by the other counsel, you mentioned a 5-hour working day or a 25-hour week for attorneys. Mr. Morrow, would you feel that if actually 60 or 70 hours a week were expended that any different figure should be allowed for that kind of pressure work?

A. Well, in using that I used that in connection only with estimating what a man working in an ordinary manner and not under great pressure—that is the way he should work—should be entitled to earn and gross in a year, \$60,000. [56]

Now if you take the other basis, the check hour

(Testimony of Hubert T. Morrow.)

basis, of course if a man wants to work 20 hours a day he gets that many more hours.

The Court: What if the judge keeps him here until midnight, 9:00 o'clock, 11:00 o'clock in the morning?

The Witness: That is so unusual that only lately have I read of anything like that occurring, your Honor.

The Court: Well, what if it did happen, would that be an additional factor to take into consideration?

The Witness: Yes, sir, I think that if your Honor should undertake to work a man so hard that he makes trouble at home and things like that, it should be figured in some way.

The Court: Nobody worries about the judge's home.

The Witness: I did a while ago. I said I was sorrier for you than I was for the attorneys.

The Court: The long and short of your answer is that you figured five hours a day and ordinary, normal working hours.

The Witness: Yes, sir.

The Court: And did not take into consideration high-pressure work over long periods of time?

The Witness: No, sir.

The Court: I think in one of the months here, in Mr. FitzPatrick's or Mr. Fussell's affidavit, one of the months you showed a total of—how many hours? [57]

Mr. FitzPatrick: Around 89.

(Testimony of Hubert T. Morrow.)

The Court: One of them was 160 some-odd hours, I think.

Mr. Fussell: I can't remember. I will answer you in just a moment.

The Court: Anyhow, the record shows what it shows.

The Witness: Your Honor, I did figure in this extreme type of litigation and all the concurrent, concomitant difficulties that there would be an extreme pressure, yes, but I used a conservative basis, I think.

Mr. Chapman: Your Honor, could I have the response that we just filed? I think it is among the papers on your desk.

The Court: It was filed in duplicate?

Mr. Chapman: Yes.

(The document referred to was passed to counsel.)

Q. (By Mr. Chapman): Mr. Morrow, I am directing your attention to an exhibit attached to the response of the plaintiffs, the third party plaintiff Long Beach Federal, to the application re attorneys' fees.

A. Is that the one in July?

Q. No, that was filed just today, Mr. Morrow, and the exhibit is headed "Report of the Select Committee to Investigate Executive Agencies, Tenth Intermediate Report." Had that come to your attention in connection with the opinion you have given on these fee applications? [58]

(Testimony of Hubert T. Morrow.)

A. I think it is the same thing. Wasn't the hearing in July of that year?

Q. That is right. June I think it was, Mr. Morrow.

A. June and July, I think. I have read it. I have read it twice.

Q. That answers that question.

Mr. Works: Your Honor, I think the averment that the court has in mind is the one appearing at page 46 of the original affidavit wherein it states that the total time spent by Mr. FitzPatrick in June, 1946, amounted to over 183 hours. I think that is probably the figure you had in mind.

The Court: I had forgotten. I thought it was either 140 or 160.

Q. (By Mr. Chapman): Mr. Morrow, did you give any consideration in your opinion to the source of the funds from which these fees would be allowed or paid?

The Court: I do not understand that question. Maybe Mr. Morrow does.

Mr. Chapman: Let's rephrase it. I certainly want the court to understand it.

Q. Did you give any consideration, Mr. Morrow, to the fact that the applications for an allowance from funds on deposit in the registry of this court, funds brought here by various of the lawyers party to this litigation, as a result [59] of adversary proceedings?

(Testimony of Hubert T. Morrow.)

Mr. Works: May I amend your question, "or as the court may otherwise direct"?

Mr. Chapman: I don't understand the amendment, your Honor.

Mr. Works: You are referring, as I understand it, to funds on deposit in the registry of the court. We have requested allowance be paid either out of funds on deposit in the registry of the court or as the court may otherwise direct.

The Court: No, the question was not that; his question was, did he give consideration—

Mr. Chapman: To the possibility that it would be paid out of the funds in the registry of the court brought here by the attorneys.

The Court: That is what I understood his question to mean.

Mr. Works: Very well.

The Witness: Do you mind if I ask a question to clarify that?

Mr. Chapman: Go right ahead.

The Court: Let me suggest that I think I know what he is driving at. In other words, that the lawyer produced a sum of money in court which up to now totals approximately \$14 million in cash and securities. [60]

The Witness: Now, sir, I did not. I would consider that that would be an element of success in their effort, which I have not included in arriving at my estimate at all.

Q. (By Mr. Chapman): Of course we don't

(Testimony of Hubert T. Morrow.)

know whether it is success or not. It is only up to the court now.

A. I mean, if it were paid I have not given any consideration to any question of success or failure. Generally in a lawsuit when one is trying to fix fees they have the advantage of knowing that the lawyer has made a certain accomplishment, and that is taken into consideration in fixing a fee. But here I have left out entirely out of my opinion any question of accomplishment. So I will say I have not, in answer to your question, I have not taken it into consideration.

Mr. Chapman: No further questions.

The Court: Mr. Westover?

Mr. Westover: No further questions.

The Court: Mr. Sutter?

Mr. Sutter: No further questions on behalf of Title Service.

The Court: Mr. Gilbert?

Mr. Gilbert: None, your Honor.

The Court: Redirect?

Mr. Works: No redirect, your Honor.

The Court: Does anybody else have any questions to ask [61] Mr. Morrow? (No response.)

You may be excused. Thank you very much.

(Witness excused.)

Mr. Gilbert: I assume you have no other witnesses?

Mr. Works: No, that is all.

Mr. Gilbert: I had prepared a hypothetical question——

The Court: Just a moment. Do you rest on your petition?

Mr. Works: We have no further evidence to offer, your Honor.

The Court: Very well.

Mr. Works: We are proceeding, of course, on the assumption that inasmuch as the affidavits are not controverted to the rendition of service that they stand as evidence in the matter.

The Court: The affidavits that are offered in support of the petition will be deemed to be in evidence.

Mr. Works: We will so offer them, your Honor.

The Court: Very well. Then I think perhaps they had better be marked with some kind of a number. It is a verified petition?

Mr. Works: It is an affidavit.

The Court: There is a motion and it is supported by affidavits?

Mr. Works: A motion supported by affidavits; that is right. [62]

The Court: And the original motion was filed when?

Mr. Works: I don't have the filing date of these copies, your Honor. Let me look. January 6, 1949, I understand, your Honor. The supplement was July 8, 1949, as I recall.

The Court: The original motion, together with accompany affidavits, is admitted in evidence as Exhibit 2-27-50-2; and the supplemental motion

filed July 8, 1949, is No. 3 with the same key numbers.

(The documents referred to were received in evidence as Petitioner O'Melveny & Myers and Fitzpatrick Exhibits Nos. 2-27-50-2 and 2-27-50-3.)

The Court: Now do you rest on the petition for fees?

Mr. Works: On the petition for fees; yes, your Honor.

The Court: Is there evidence offered by the San Francisco Bank, the official defendants, or anybody else?

Mr. Bishop: We ask, by the same token, that our affidavits that were filed today, that is, the affidavit of Frank Noon, which is attached to our opposition, as well as the affidavit of Irving Bogardus, be deemed as admitted in evidence.

The Court: Let me see. I had that affidavit here.

In any event, is your answer verified? (Examining document.) It is not.

The defendants offer in evidence, and they are received in evidence, the affidavit of Frank C. Noon, dated February 24, 1950, and filed February 27, 1950, attached to the answer [63] in opposition to the Federal Home Loan Bank, which is admitted in evidence as 2-27-50-A, and the affidavit of Irving Bogardus, filed February 27 and verified February 25, 1950, is likewise received in evidence as the defendant San Francisco Bank's exhibit.

Mr. Angell: Pardon me. I couldn't hear you.

The Court: The affidavit of Mr. Noon will be admitted as Exhibit 2-27-50-A and the affidavit of Bogardus will be admitted as Exhibit 2-27-50-B for the defendant bank only.

Mr. Angell: That is satisfactory.

The Court: The defendant San Francisco Bank only.

Mr. MacGuineas: Well, the official defendants would like to adopt that evidence as being on their behalf also.

The Court: Very well. That is admitted by the same numbers, A and B for the defendant San Francisco Bank and the so-called official defendants.

(The documents referred to were received in evidence as Defendant San Francisco Bank and Official Defendants Exhibit Nos. 2-27-50-A and 2-27-50-B.)

The Court: Now is there any other opposition evidence?

Mr. MacGuineas: Yes, your Honor.

In connection with the opposition filed on behalf of the official defendants on September 23, 1949, there were attached thereto——

Mr. Chapman: Your Honor, could I inquire if we are going to have a recess this afternoon? [64]

The Court: Yes. We will have a short recess.

(Short recess.)

Mr. Bishop: Your Honor please——

The Court: Mr. Bishop, the clerk is not here. Is

it agreeable to counsel that we can proceed without him?

Mr. Gilbert: It is with me.

Mr. Bishop: Mr. Chapman isn't here either, nor Mr. Works or Mr. Fussell.

The Court: Will someone please get them.

The record will show counsel are now present.

I would like to say to counsel that I do not have any matters on the calendar tomorrow or the following day so that I do not feel that everyone need be under the pressure of trying to dispose of this matter today.

And in connection with the matter of the application of fees of O'Melveny & Myers and Richard FitzPatrick, I was discussing with the court reporter the question as to whether or not the affidavits referred to should be copied into the record and deemed read. I will state that I have read them. What is the pleasure of counsel in that respect? Ordinarily, if this were the only thing pending and these were the only files I do not think it would be necessary to do so, but in connection with paging the record, which the clerk is now getting up for the appeal from the interim injunction order, the paging now exceeds 13,000 pages and will in all [65] likelihood exceed 15,000 pages, so that from time to time in referring back to matters it sometimes takes an hour or an hour and a half to find a document which you are looking for in connection with a particular matter.

I will leave it up to counsel as to whether or not

they want those documents copied into the transcript at this point or at the point they were offered.

Mr. Works: I haven't discussed this with counsel, but I think that would be the wise thing to do, your Honor.

The Court: In that way your transcript will practically be your complete record except for services.

Mr. Works: Yes, I would be happy to follow that procedure.

The Court: What is the view of the defendants?

Mr. Bishop: Your Honor, we are willing to stipulate that the affidavits that are the subject of discussion here be deemed to have been read into the record.

The Court: And copied into the transcript of the record by the reporter?

Mr. Bishop: That is correct.

Mr. Works: To be physically copied.

The Court: To be physically copied.

Very well. Therefore the order is made.

Mr. Bishop: In that connection, we would also like to have in that same record the other affidavit of Mr. Bogardus [66] which was attached to the original opposition as filed by us in O'Melveny & Myers' application for fees.

The Court: Let me find that original application now. You say that was filed September——

Mr. Bishop: 9——

The Court: 1949?

Mr. Bishop: Yes, sir. The last page of the opposition, the very last.

The Court: I have gotten up to September 12th and I have not found it yet, commencing from September 1st.

Mr. Bishop: My copy is dated September 15th, but that is when I received service of it.

The Court: There is one filed by James M. Carter, United States Attorney, September 3rd, memorandum in opposition to motions for orders directing payment of attorneys' fees on account and repayment of moneys advanced and supplement thereto, which has attached to it an affidavit of J. Francis Moore.

Mr. MacGuineas: Your Honor, those are the affidavits I was about to offer. If you have them before you I will be happy to make my offer now.

Mr. Angell: The affidavit in question is just a single page attached to the opposition and is the affidavit of Irving Bogardus.

The Court: I have found this, and attached also is the [67] affidavit of Ernest E. Reardon, with its exhibits.

Mr. MacGuineas: The exhibits to both affidavits I should like to have offered in evidence.

The Court: Very well. The affidavit of J. Francis Moore and Ernest E. Reardon, the affidavit of J. Francis Moore dated the 21st day of September 1949 and sworn to before Paul Peiffer, Jr., Notary Public, with the exhibits, and the affidavit of Ernest E. Reardon, sworn to on the 20th day of September, 1949, before Paul Peiffer, Jr., and its exhibits, both being pages numbered now of the record 9850 to 9883 inclusive, and attached to the memorandum

in opposition to motion for orders directing payment of attorneys' fees on account and repayment of moneys advanced and supplements thereto filed in this court on September 23, 1949 are received in evidence and may be deemed to be read in evidence and copied into the record as Exhibit 2-27-50-C for Moore, and 2-27-50-D for Reardon.

For all defendants?

Mr. Angell: Yes, sir.

The Court: Very well.

(The documents referred to were received in evidence as Defendants' Exhibits 2-27-50-C and 2-27-50-D.)

(The document referred to is, in words and figures, as follows, to wit:) [68]

* * *

The Court: I do not find that, Mr. Bishop.

Mr. Bishop: Could I see the file, please?

The Court: This is July 28, 1949, to October 10, 1949.

(The document referred to was passed to counsel.)

Mr. Chapman: While your Honor is on the subject of affidavits——

The Court: Just a moment. Let us get one thing in at a time here.

Your Exhibit No. 1 I am putting in the transcript, too.

Mr. Works: Thank you, your Honor. [119]

Mr. Bishop: There must be some other file, be-

cause Mr. Works has the same problem that we have, that their affidavit of Mr. FitzPatrick isn't here, and our opposition isn't even here.

The Court: Maybe somebody forgot to file them.

Mr. Bishop: No, they were served and filed, your Honor.

Mr. Works: We are going to simplify our matter by asking leave to file a duplicate, if we may.

The Court: An affidavit of FitzPatrick?

Mr. Works: Yes, your Honor.

The Court: It seems to me that I read two or three of them Saturday.

Mr. Works: Perhaps so. It doesn't appear to be in this file, however. It may be in some other file.

The Court: Mr. Reporter, the affidavit and motion referred to as Petitioners' Exhibit 2-27-50-2 is from pages 8207 to 8287 of the record and was filed in this court on January 6, 1949, which consists of the motion, a very short statement of points and authorities, the affidavit of Pierce Works and John Whyte and the affidavit of Richard FitzPatrick.

It is not necessary to put in these affidavits of service by mail?

Mr. Works: No.

(The document referred to is, in words and figures, as follows, to wit:) [120]

PETITIONERS' EXHIBIT No. 2-27-50-2

RICHARD FITZPATRICK,
756 South Broadway,
Los Angeles 14, California,
TUCKER 1576,

O'MELVENY & MYERS,
433 South Spring Street,
Los Angeles 13, California,
MICHIGAN 2611,

Attorneys for Plaintiffs in Civil Action No.
5678-PH (WM) and Attorneys for De-
fendant, Third-Party Defendant, Cross-
Claimant and Cross-Defendant Federal
Home Loan Bank of Los Angeles, a body
corporate, in Civil Action No. 5421-PH.

In the District Court of the United States for the
Southern District of California, Central Division

Civil Action No. 5678-PH (WM)
(Consolidated With Civil Action No. 5421-PH)

FEDERAL HOME LOAN BANK OF LOS
ANGELES, a Body Corporate; COAST FED-
ERAL SAVINGS AND LOAN ASSOCIA-
TION, an Incorporated Association; STAND-
ARD FEDERAL SAVINGS AND LOAN
ASSOCIATION, an Incorporated Association;
FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF WILMINGTON, an In-
corporated Association; CENTRAL BUILD-
ING AND LOAN ASSOCIATION, an In-

Petitioners' Exhibit No. 2-27-50-2—(Continued)

corporated Association; STATE SAVINGS AND LOAN ASSOCIATION, an Incorporated Association; LOS ANGELES AMERICAN SAVINGS & LOAN ASSOCIATION, an Incorporated Association,

Plaintiffs,

vs.

FEDERAL HOME LOAN BANK OF PORTLAND, Sometimes Known and Referred to as Federal Home Loan Bank of San Francisco, a Body Corporate; JOHN H. FAHEY, Individually; HOME LOAN BANK BOARD, a Board Functioning Under the Authority of Presidential Reorganization Plan 3 of 1947; WILLIAM K. DIVERS, Chairman; J. ALSTON ADAMS and O. K. LA ROQUE, as Regular Members of the HOME LOAN BANK BOARD, and Each of Them; ONE DOE, TWO DOE, THREE DOE, FOUR DOE, FIVE DOE, SIX DOE, SEVEN DOE, EIGHT DOE, NINE DOE, TEN DOE, ELEVEN DOE, TWELVE DOE, THIRTEEN DOE, FOURTEEN DOE, FIFTEEN DOE, and SIXTEEN DOE,

Defendants.

PAUL MALLONEE, et al.,

Plaintiffs,

vs.

JOHN H. FAHEY, et al.,

Defendants.

Petitioners' Exhibit No. 2-27-50-2—(Continued)

MOTION FOR ORDER DIRECTING PAYMENT OF ATTORNEYS' FEES ON ACCOUNT

Plaintiffs herein, and each of them, move the above-entitled Court as follows:

1. That an order be made and entered by the above-entitled Court in the above-entitled consolidated civil actions fixing reasonable attorneys' fees on account for legal services already rendered in said actions, and both of them, from and after April 1, 1946, to and including October 31, 1948, and to be rendered in the future conduct of said actions, or [122] either of them, by Richard FitzPatrick, Esq., and Messrs. O'Melveny & Myers, attorneys-at-law, for and on behalf of plaintiffs, or any of them, in Civil Action No. 5678-PH (WM), and for and on behalf of defendant, third-party defendant, cross-claimant, and cross-defendant Federal Home Loan Bank of Los Angeles, a body corporate, in Civil Action No. 5421-PH.

2. That said order shall direct the clerk of the above-entitled Court to pay the amount of attorneys' fees so fixed by said Court to said Richard FitzPatrick, Esq., and Messrs. O'Melveny & Myers out of the funds, assets, or properties now on deposit in the registry of said Court in said consolidated civil actions, or as said Court shall otherwise direct.

Said motion will be made upon both and each of the following grounds:

Petitioners' Exhibit No. 2-27-50-2—(Continued)

1. That Federal Home Loan Bank of Los Angeles, a body corporate (hereinafter referred to as "Los Angeles Bank"), plaintiff in Civil Action No. 5678-PH (WM), and defendant, third-party defendant, cross-claimant, and cross-defendant in Civil Action No. 5421-PH, has no funds with which to pay its attorneys, Messrs. O'Melveny & Myers and Richard FitzPatrick, Esq., either for services already rendered or to be rendered by said attorneys for and on its behalf in said actions, or either of them, since all of its assets are in the possession of Federal Home Loan Bank of Portland, sometimes known and [123] referred to as Federal Home Loan Bank of San Francisco, a body corporate, one of the defendants in Civil Action No. 5678-PH (WM); hence, a denial to Los Angeles Bank of the use of any portion of said assets with which to pay attorneys' fees would in effect preclude Los Angeles Bank from further prosecuting or defending in good faith said actions, or either of them.

2. That plaintiffs Coast Federal Savings and Loan Association, an incorporated association (hereinafter referred to as "Coast Federal"); Standard Federal Savings and Loan Association, an incorporated association (hereinafter referred to as "Standard Federal"); First Federal Savings and Loan Association of Wilmington, an incorporated association (hereinafter referred to as "First Federal"); Central Building and Loan Association, an incorporated association (hereinafter referred to as

Petitioners' Exhibit No. 2-27-50-2—(Continued)
“Central”); State Savings and Loan Association, an incorporated association (hereinafter referred to as “State”), and Los Angeles American Savings & Loan Association, an incorporated association (hereinafter referred to as “Los Angeles American”), and each of them, in Civil Action No. 5678-PH (WM), have a beneficial interest in the assets of Los Angeles Bank now in the possession of said defendant Federal Home Loan Bank of Portland sufficient to entitle them, and each of them, to the payment out of said assets of the fees of their attorneys, Messrs. O’Melveny & Myers and [124] Richard FitzPatrick, Esq., in said actions, and both of them.

Said motion will be based upon all of the pleadings, papers and files in the above-entitled consolidated actions, and upon the memorandum of points and authorities and the affidavits of Pierce Works and John Whyte, Esqs., and Richard FitzPatrick, Esq., attached hereto.

Dated: January 5, 1949.

RICHARD FITZPATRICK,
O’MELVENY & MYERS,
PIERCE WORKS, and
JOHN WHYTE,

By /s/ PIERCE WORKS,
Attorneys for Plaintiffs in Civil Action No. 5678-PH (WM), and Attorneys for Defendant, Third-Party Defendant, Cross-Claimant, and Cross-Defendant Los Angeles Bank in Civil Action No. 5421-PH.